ISSN 1826-3534

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RIVISTA DI DIRITTO PUBBLICO ITALIANO, COMPARATO, EUROPEO

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22 DICEMBRE 2025

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Fascicolo n. 34/2025

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RIVISTA DI DIRITTO PUBBLICO ITALIANO, COMPARATO, EUROPEO

ISSN 1826-3534
Numero 34, 2025
Tutti i contributi, ad eccezione dell'editoriale di apertura, sono stati sottoposti a *double blind peer review*.

E-mail: redazione@federalismi.it

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Le riparazioni post-conflitto come strumenti di pace e parità di genere. Una raccolta di riflessioni in prospettiva multidisciplinare.*

di Ludovica Poli
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Abstract [IT]: La riflessione accademica ha messo in luce la necessità dell'analisi di genere dei conflitti armati, mostrando come guerre e violenze incidano in modo diverso su donne e uomini e come tali differenze debbano orientare politiche di ricostruzione e prevenzione. La ricerca dimostra infatti che esiste un forte legame tra disparità di genere e propensione alla conflittualità e che la guerra può determinare importanti opportunità di trasformazione sociale. Da ciò deriva l'importanza di riparazioni post-conflitto che siano *gender-sensitive*, capaci cioè di riconoscere le diverse esperienze delle vittime e di prevenire la reiterazione di strutture discriminatorie nella ricostruzione. Il numero speciale raccoglie contributi che esplorano tali dinamiche in differenti prospettive disciplinari, evidenziando l'importanza di ripensare le riparazioni come processi trasformativi, capaci di promuovere l'*agency* femminile e sostenere il cambiamento strutturale nelle società colpite dal conflitto.

Title: Post-conflict reparations as instruments of peace and gender equality. A collection of reflections from a multidisciplinary perspective
Abstract [EN]: Academic studies highlight the need for a gendered analysis of armed conflicts, demonstrating how wars and violence affect women and men differently and how these differences should guide reconstruction and prevention policies. Research shows that there is a strong link between gender inequality and the inclination to conflict, and that war can provide important opportunities for social transformation. This element underlines the urgency for post-conflict reparations that are gender-sensitive, i.e., capable of recognizing the different experiences of victims and preventing the repetition of discriminatory structures in reconstruction. The special issue collects contributions that explore these dynamics from different disciplinary perspectives, highlighting the importance of rethinking reparations as transformative processes capable of promoting female agency and supporting structural change in societies affected by conflict.

Parole chiave: conflitto armato, genere, riparazioni post-conflitto, riparazioni trasformative, prevenzione
Keywords: armed conflict, gender, post-conflict reparations, transformative reparations, prevention

Sommario: **1.** La necessità di una *gendered analysis* dei conflitti armati - **2.** L'impatto di genere delle riparazioni post-conflitto tra ostacoli e possibilità. Introduzione al numero speciale della Rivista

1. La necessità di una *gendered analysis* dei conflitti armati

Il rapporto tra conflitti armati e genere si è rivelato cruciale nella riflessione accademica degli ultimi anni.

L'analisi muove dalla necessità di comprendere come gli individui (donne, uomini, persone LGBTQ+ e

* Il numero speciale della rivista raccoglie le riflessioni di Autrici ed Autori che hanno condiviso una prima versione dei loro lavori nel corso di un Convegno tenutosi a Torino il 6 maggio 2025 dal titolo "*Gender impact of post-conflict reparations: historical, philosophical and legal perspectives - L'impatto di genere delle riparazioni post-conflitto: prospettive storiche, filosofiche e giuridiche*", organizzato dall'Hub *Genere e Sostenibilità sociale* del Dipartimento di Giurisprudenza dell'Università di Torino, con il patrocinio del CIRSDe (Centro interdisciplinare di ricerche e studi delle donne e di genere)..

altre identità non conformi) siano differentemente interessati dalle dinamiche conflittuali e, pertanto, il focus d'indagine è posto su fattori variamente dipendenti l'uno dall'altro come la vulnerabilità e i ruoli attribuiti ad alcune componenti della società, l'accesso alle risorse e la capacità di partecipazione ai processi decisionali. L'approccio *gender-sensitive* allo studio dei conflitti armati è volto tanto a rilevare, con sempre maggiore precisione, le disuguaglianze di genere su cui la guerra si inserisce e che spesso alimenta, quanto a promuovere politiche di ricostruzione e interventi post-conflitto più inclusivi ed efficaci, in grado di rispondere alle specifiche esigenze dei diversi gruppi all'interno di una popolazione. Il tema si è dimostrato suscettibile di diverse declinazioni.

Un primo filone di ricerca concerne la relazione tra la natura più o meno paritaria delle società e la loro predisposizione al conflitto. Studiose e studiosi di *security studies* hanno dimostrato infatti che le società in cui si registra una maggiore parità di genere risultano più pacifiche, a riprova del dato per cui "*gender equality matters for peace at the individual, organizational and state levels*"[1]. Non a caso, un indicatore significativo della propensione di uno Stato alla violazione di obblighi internazionali in materia di pace e sicurezza, e più in generale al conflitto, è costituito dalla scarsa protezione delle donne contro la violenza domestica, lo stupro ed altre forme di prevaricazione[2].

Anche la letteratura economica si è occupata delle conseguenze a lungo termine della violenza di genere praticata durante i conflitti sul benessere di donne e ragazze, nonché dell'impatto di interventi economici e sociali di gruppo rivolti specificatamente alle donne in contesti di guerra[3]. Gli studi dimostrano ancora una volta che, mentre il conflitto tende ad accentuare le disuguaglianze esistenti, una più solida parità di genere può rappresentare un fattore di riduzione del rischio di ulteriore conflittualità.

Lungi dall'essere soltanto una riflessione utile per un inquadramento generale, questo ambito di indagine dimostra la ragione profonda dell'opportunità di politiche di prevenzione e ricostruzione post-conflitto che pongano la parità di genere al centro. D'altronde, come ben dimostrato da un'Autrice, il genere non deve essere inteso solo quale fattore di vulnerabilità, ma va interpretato anche come motore causale di conflitti violenti, in particolare allorché, combinandosi con altri assi di differenziazione (quali etnia, classe, orientamento sessuale, etc.) genera "*intersectionally-gendered mechanisms*" che alimentano le tensioni sociali[4].

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[1] E. BJARNEGÅRD, E. MELANDER, G. BARDALL, K. BROUNÉUS, E. FORSBERG, E. JOHANSSON, A. MUVUMBA SELLSTRÖM, L. OLSSON, *Gender, peace and armed conflict*, in I. DAVIS (Ed.), *SIPRI Yearbook 2015: Armaments, Disarmament and International Security*, Oxford University Press, Oxford, 2015, p. 105.

[2] Per un approfondimento sulla relazione tra le due dimensioni della sicurezza: V.M. HUDSON, M. CAPRIOLI, B. BALLIF-SPANVILL, R. MCDERMOTT, C. F. EMMETT, *The Heart of the Matter: The Security of Women and the Security of States*, in *International Security*, n. 3, 2008, pp. 7-45.

[3] Per una sintesi ragionata della principale letteratura quantitativa sulla relazione tra genere e conflitto armato: S. ANDERSON, M.M. SVIATSCHI, *Gender and armed conflict*, in *Economic Policy*, 2025, p. 3 ss.

[4] E. PRÜGL, *Gender as a cause of violent conflict*, in *International Affairs*, n. 5, 2023, pp. 1885-1902; l'Autrice identifica, in particolare, tre "meccanismi intersezionali di genere" che alimentano le dinamiche di conflitto: la protezione maschilista, la competizione maschilista e la mobilitazione per la sopravvivenza.

Un secondo ambito di indagine considera più dettagliatamente le dinamiche di conflitto e il loro impatto sulle persone che ne sono interessate, valutando in particolare la differente distribuzione della violenza[5]. Mentre gli uomini sono più frequentemente soggetti a modalità di violenza 'tradizionalmente maschili', quali reclutamento forzato, combattimento, detenzione arbitraria o uccisioni mirate[6], nei contesti di guerra le donne sono molto più diffusamente vittime di violenza sessuale e di varie forme sfruttamento, e subiscono gravi limitazioni nell'accesso a risorse fondamentali come istruzione, occupazione e assistenza sanitaria[7]. Semplificando, si potrebbe sostenere che gli uomini tendono a subire forme di violenza direttamente collegate al conflitto, mentre le donne sono oggetto di violenza indirettamente determinata e alimentata dalla guerra: studi dimostrano, per esempio, che la spirale di violenza generalizzata, tipica dei contesti conflittuali, alimenta lo stupro e altre forme di violenza sessuale e domestica in circuiti intimi e familiari[8].

Questo elemento naturalmente non esclude che, almeno in alcuni contesti, vi sia spazio per una partecipazione diretta al conflitto da parte delle donne, che sia, alternativamente, sostenuta da una scelta autonoma e consapevole, l'esito di coercizione oppure, ancora, una semplice strategia di sopravvivenza[9]. Anche in questo caso, alla fine del conflitto, le donne che hanno preso parte direttamente agli scontri spesso si trovano calate in contesti in cui le dinamiche della pacificazione e della ricostruzione perpetuano stereotipi di genere, per esempio sottostimando la loro partecipazione alla guerra, come dimostrano spesso le carenze dei programmi di disarmo, smobilitazione e reintegrazione (DDR) nel supportare la componente femminile di una popolazione[10].

Il genere, tuttavia, non solo aiuta a distinguere tra le forme di violenza a cui un individuo rischia più facilmente di essere sottoposto, ma più sostanzialmente qualifica l'esperienza del singolo. È infatti un dato più che assodato che i conflitti armati, tanto quelli interni quanto quelli internazionali, sono ben lungi dall'avere un impatto *gender neutral* sulle componenti delle società che ne sono colpite. A seconda del genere a cui appartengono, dunque, gli individui vivono esperienze differenti nella guerra: il modo

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5 Sul tema, imprescindibile: C. CHINKIN, *Gender and Armed Conflict*, in A. CLAPHAM, P. GAETA (Eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, Oxford, 2014 pp. 675–699.

6 Per un approfondimento sulla vittimizzazione maschile: R.C. CARPENTER, *Recognizing Gender-Based Violence against Civilian Men and Boys in Conflict Situations*, in *Security Dialogue,* n.1, 2006, pp. 83-103; C. ORMHAUG, P. MEIER, H. HERNES, *Armed Conflict Deaths Disaggregated by Gender*, International Peace Research Institute, Oslo, 2009.

7 Per una riflessione sulle violazioni subite dalle donne durante il conflitto armato: M. BUVINIC, M. DAS GUPTA, U. CASABONNE, P. VERWIMP, *Violent Conflict and Gender Inequality: An Overview*, in *World Bank Research Observer*, n. 1, 2013, pp. 110-38; D. K. COHEN, R. NORDÅS, *Sexual Violence in Armed Conflict: Introducing the SVAC Dataset, 1989–2009*, in *Journal of Peace Research*, n. 3. 2014, pp. 418-428.

8 Sul punto: S. ANDERSON, M.M. SVIATSCHI, *Gender and armed conflict cit*., pp. 14-16 e M. MURPHY, ER SMITH ER, S. CHANDARANA, M. ELLSBERG, *Experience of Intimate Partner Violence and Non-Partner Sexual Violence in Conflict-Affected Settings: A Systematic Review and Meta-Analysis*, in *Trauma Violence Abuse*, n. 5, 2025 pp. 1109-1124.

9 Per alcune riflessioni sulla partecipazione delle donne al conflitto: R. BRETT, *Girl soldiers: denial of rights and responsibilities*, in *Refugee Survey Quarterly*, n. 2, 2004, pp. 30-37.

10 Sul punto: R. ARNETT, *Women in Conflict*, in *Columbia Social Work Review*, 2015.

attraverso cui ciascuno 'subisce' il (e 'reagisce' al) conflitto è infatti profondamente modellato dal genere e dalle relazioni di potere ad esso correlate[11]. Questo vale non solo con riferimento alle diverse forme di violenza a cui vengono sottoposte le donne, ma anche nel caso della vittimizzazione maschile, in particolare con riferimento alla commissione di crimini sessuali contro uomini e ragazzi, sia quando questi siano commessi da altri uomini, sia quando (pur più raramente) siano le donne ad essere carnefici[12].

Una terza prospettiva di indagine accademica valuta le conseguenze a lungo termine delle guerre sul piano sociale, economico e politico e, concentrandosi sulle strategie di resilienza e *agency* delle popolazioni colpite, considera il conflitto come momento di rottura potenzialmente atto a determinare un cambiamento virtuoso. Gli studi dimostrano infatti che l'instabilità sociale che si genera nel conflitto (e spesso permane una volta che lo stesso sia concluso) può produrre tanto disuguaglianze accentuate, quanto opportunità di trasformazione strutturale.

Il cambiamento può interessare la fase stessa del conflitto che, pur essendo fonte di brutalità e distruzione, può catalizzare trasformazioni profonde nei rapporti di potere. La rottura delle strutture istituzionali e la destabilizzazione delle norme consolidate talvolta creano, infatti, le condizioni per la ridefinizione dei ruoli di genere, delle gerarchie locali e delle relazioni di forza tra gruppi sociali diversi[13]. Accade per esempio che, per ragioni strategiche, gruppi armati sfidino norme culturali che hanno un impatto discriminatorio sulle donne o su altri gruppi sociali come giovani o minoranze etniche [14] creando occasioni di '*empowerment*' (pur relativo e spesso solo temporaneo) per soggetti tradizionalmente marginalizzati, che sperimentano così nuove possibilità di partecipazione politica o militare.

Con particolare riferimento alla condizione femminile, poi, alla fine del conflitto può accadere che, per far fronte a nuovi assetti domestici, le donne assumano ruoli inediti, diventando capi-famiglia o modificando le proprie attività economiche[15]. Questo è particolarmente evidente nelle situazioni in cui le norme che regolano l'accesso alle risorse (come, per esempio, la proprietà terriera) sono determinate da strutture culturali e pratiche di genere: in queste ipotesi, la frattura sociale determinata dal conflitto può

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11 Per alcuni spunti: S. SHARONI, J. WELLAND, L. STEINERAND, J. PEDERSEN (Ed.), *Handbook on Gender and War*, Cheltenham, Edward Elgar, 2016.

12 S. BANWELL (*Gender and the Violence(s) of War and Armed Conflict: More Dangerous to be a Woman?*, Emerald Publishing, 2020), tra le altre questioni, considera l'uso di violenza sessuale perpetrata ai danni di uomini e ragazzi in Darfur come strumento di subordinazione nel contesto una politica di 'arabizzazione' della regione, volta a marginalizzare la componente africana della popolazione ed esplora il caso della violenza sessualizzata praticata da personale militare femminile statunitense nella prigione di Abu Ghraib.

13 A.T. LARMIN, D.K. BANINI, *Civil wars and stumbling of patriarchal societies: The reconstruction of gender relations in post-conflict Liberia*, WIDER Working Paper, n. 145, The United Nations University World Institute for Development Economics Research (UNU-WIDER), Helsinki, 2022.

14 T. DEVEREAUX, *The Determinants of Insurgent Gender Governance*, in *International Organization*, n. 1, 2025, pp. 36-80.

15 M. BUVINIC, M. DAS GUPTA, U. CASABONNE, P. VERWIMP, *Violent Conflict and Gender Inequality cit.*, pp. 123-128.

indurre, nell'immediato dopoguerra, a ridefinire la posizione delle donne e superare prassi discriminatorie[16].

Più in generale, il conflitto può accelerare il riconoscimento di competenze e *leadership* femminili, laddove le donne assumono ruoli economici e decisionali precedentemente riservati agli uomini. La letteratura prova per esempio la centralità di un coinvolgimento femminile nei processi di *peacebulding*[17].

Naturalmente, queste dinamiche non implicano automaticamente o necessariamente un avanzamento verso l'uguaglianza; il conflitto rappresenta infatti un momento di profonda ambivalenza, in cui vulnerabilità e opportunità coesistono. Poiché la redistribuzione dei poteri durante il conflitto o nell'immediato dopoguerra è spesso contingente, temporanea e soggetta a inversioni rapide, si pone la necessità di politiche mirate a consolidare i cambiamenti positivi e prevenire il ritorno a gerarchie oppressive.

2. L'impatto di genere delle riparazioni post-conflitto tra ostacoli e possibilità. Introduzione al numero speciale della Rivista

I diversi filoni di ricerca cui si ha fatto menzione suggeriscono l'importanza di considerare attentamente le dinamiche di genere che precedono il conflitto, si producono (o riproducono) durante lo stesso ed emergono dal *setting* che ne fa immediatamente seguito, al fine di evitare di perpetuare disuguaglianze strutturali e replicare modelli di esclusione nella fase di ricostruzione.

Un'analisi di genere ben calibrata può infatti contribuire alla progettazione di interventi più efficaci e inclusivi, che indirizzino in profondità le dinamiche di potere. In questa precisa direzione si inserisce (e per certi versi si impone) la riflessione sul tema delle riparazioni post-conflitto[18]. Esse costituiscono senz'altro strumenti essenziali nei processi di giustizia e ricostruzione che seguono la fine di un conflitto armato e sono volte a offrire non solo una compensazione materiale, ma anche riconoscimento alle vittime di gravi violazioni dei diritti fondamentali. Le riparazioni, dunque, non sono e non possono essere limitate a forme di risarcimento economico o restituzione di beni, ma includono meccanismi di reintegrazione sociale, sostegno psicologico e finanche simbolico volte a promuovere la riconciliazione e a mitigare (per quanto possibile) le conseguenze del conflitto, ma soprattutto a prevenire il ripetersi di

[16] J. MADHAV, *Civil War Induced Social Rupture and Transformative Changes: Women's Political Participation and Land Ownership in Post-War Nepal*, in *International Journal of Politics, Culture, and Society*, 2025, pp. 1-35.

[17] S. ANDERSON, M.M. SVIATSCHI, *Gender and armed conflict cit.*, pp. 24-26; per un approfondimento: J.P. KAUFMAN, K.P. WILLIAMS (Eds.), *Women, Gender Equality, and Post-Conflict Transformation Lessons Learned, Implications for the Future*, Routledge, London-New York, 2017.

[18] Per un'attenta analisi della rilevanza dell'integrazione di una prospettiva di genere nella progettazione e nella realizzazione di riparazioni per le vittime di violazioni dei diritti umani: R. RUBIO-MARÍN (Ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, Cambridge University Press, Cambridge, 2009.

forme di violenza[19]. In questi termini, le riparazioni vengono spesso presentate come uno strumento per trasformare il danno subito in un processo di ricostruzione personale e, allo stesso tempo, collettiva.

Tuttavia, anche le politiche di riparazione non sono neutre rispetto al genere proprio perché rappresentano potenzialmente un motore di cambiamento: esse possono veicolare una situazione più equilibrata e virtuosa o, al contrario, consolidare dinamiche di potere oppressive. Pertanto, affinché le riparazioni siano adeguate e funzionali, il processo decisionale che le sostiene deve fondarsi sulla profonda comprensione delle esperienze di tutte le componenti della società nel conflitto. Con particolare riferimento alla condizione femminile, si impone il coinvolgimento delle donne nella progettazione delle riparazioni[20], per consentire la loro trasformazione da vittime della violenza a protagoniste attive della ricostruzione, nella consapevolezza che una maggiore attenzione al genere nei processi di riparazione non risponde solo a un'esigenza di equità, ma consolida strategicamente la sostenibilità di soluzioni di transizione post-conflitto, fondate sul superamento di disuguaglianze strutturali.

Con l'auspicio di arricchire ulteriormente la riflessione scientifica in quest'ambito, il presente numero speciale raccoglie scritti di Autrici e Autori di diversi settori disciplinari che hanno inteso misurarsi con l'impatto delle riparazioni post-conflitto sulle dinamiche di genere.

I primi due scritti affrontano, nella prospettiva della storia del diritto, il tema della condizione delle vedove di guerra in Italia nel Novecento, dimostrando che i due conflitti mondiali hanno rappresentato un contesto di devastazione senza precedenti ma anche l'opportunità per le donne di conquistare, pur gradualmente, spazi di partecipazione alla vita pubblica. In entrambi i contributi, ben emerge come la dimensione intima e privata del lutto per la perdita del compagno sia stata trasformata in un elemento collettivo, divenendo "simbolo del sacrificio patriottico"[21] e strettamente funzionale alla "narrazione pubblica di ricostruzione"[22]. Mentre Matteo Traverso dimostra come l'assistenza alle vedove nel primo dopoguerra sia stata fortemente segnata da un controllo di natura morale, Ida Ferrero racconta la trasformazione della vedova da 'oggetto di protezione pubblica' a soggetto protagonista e consapevole della ricostruzione nazionale, attraverso un'inedita partecipazione alla vita pubblica e alla valorizzazione del ruolo di cittadina.

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[19] Per un approfondimento sui programmi di *massive reparations,* in particolare con riferimento al rapporto tra risarcimento materiale e altre misure simboliche di riparazione: P. DE GREIFF, *The Handbook of Reparations*, Oxford University Press, Oxford, 2006.

[20] O. JURASZ, *Reparations for Gendered Harms at the International Criminal Court: Towards Transformative and Gender-Just Reparations?*, in S. MOUTHAAN, O. JURASZ (Eds.) *Gender and War: International and Transitional Justice Perspectives*, Intersentia, Cambridge-Antwerp-Chicago, 2019, pp. 235-258; S.L. ZEIGLER, G.G. GUNDERSON, *The Gendered Dimensions of Conflict's Aftermath: A Victim-Centered Approach to Compensation*, in *Ethics & International Affairs*, no. 2, 2006, pp. 171-192.

[21] M. TRAVERSO, *Note sullo status delle vedove di guerra nella storia e nel diritto italiano,* in questa *Rivista*, p. 7

[22] I. FERRERO, *L'assistenza e il sostegno alle donne nell'Italia tra le due guerre: evoluzione delle politiche e approdo all'impegno di Nadia Gallico Spano e Nilde Iotti*, in questa *Rivista*, p. 24.

La riflessione poi prosegue attraverso l'analisi critica degli strumenti e dei meccanismi di riparazione tipici del diritto internazionale e del diritto internazionale penale, con i contributi di Patricio Barbirotto, Ilaria Infante e Alessia Nicastro.

Combinando la riflessione sugli impatti a lungo termine sul genere e quelli sull'ambiente, con riferimento alla guerra in Ucraina seguita all'invasione da parte della Federazione russa, Patricio Barbirotto esplora il sistema di riparazioni di guerra previsto dal diritto internazionale, evidenziando come la ricostruzione all'esito di un conflitto non possa ridursi alla sola dimensione materiale, ma debba necessariamente occuparsi anche di "*profound, often invisible long-lasting social and emotional impacts that are the basis for enduring persistent challenges*"[23]. In questa direzione, il contributo intende valorizzare un sistema che combini meccanismi interstatali (inevitabilmente volti a ristabilire ciò che è andato perduto e, dunque, con uno sguardo al passato) e riparazioni trasformative che - in quanto volte ad intervenire sulle condizioni strutturali che hanno consentito (o quantomeno alimentato) le violazioni dei diritti fondamentali - guardano alla promozione di un cambiamento nel futuro.

Con riferimento al diverso caso studio del genocidio in Ruanda, e nella specifica prospettiva del diritto internazionale penale, Ilaria Infante ricostruisce le carenze in materia di risarcimento delle vittime di crimini di genere (in particolare stupro e altre forme di violenza sessuale) riscontrabili tanto nell'operato del Tribunale penale internazionale di Arusha, quanto nell'attività dei meccanismi istituiti dal diritto interno ruandese. Nonostante importanti limiti nella risposta alle esigenze di riparazione, l'esperienza del Tribunale *ad hoc*, che ben aveva messo in luce la dimensione fortemente 'genderizzata' di alcune forme di genocidio praticate ai danni delle donne, ha dimostrato una volta per tutte l'urgenza di un approccio alle riparazioni fortemente ancorato al vissuto delle vittime, gettando le basi una più ampia riflessione istituzionale su forme di riparazione trasformativa che presuppongano un'attiva partecipazione femminile, "*in order not simply to repair the harms suffered, but also to transform social structures and relationships, including gender stereotypes*"[24].

Il contributo di Alessia Nicastro suggerisce che, almeno in parte, le difficoltà di identificare e costruire sistemi di riparazione genuinamente *gender-sensitive* possano dipendere da una certa resistenza a definire con precisione che cosa si intenda per 'genere' nella determinazione di fattispecie di crimini internazionali. Individuando i negoziati di prossima apertura sulla Convenzione per la prevenzione e la punizione dei crimini contro l'umanità[25] come contesto necessario per una riflessione sul punto, l'Autrice argomenta

[23] P. BARBIROTTO, *Gendered and Environmental Dimensions of Reparations in Post-Conflict Ukraine: Challenges and Opportunities* , in questa *Rivista*, p. 36.

[24] I. INFANTE, *Reparations for Women in Rwanda between the Shortcomings of the ICTR and the Unsatisfactory Experience of Domestic Reparations Schemes*, in questa *Rivista*, p. 72.

[25] La decisione di intraprendere i lavori sul trattato, a partire dai *Draft articles on prevention and punishment of crimes against humanity* predisposti dalla Commissione di diritto internazionale, è stata formalizzata nel dicembre del 2024

l'opportunità di introdurre una definizione ampia e inclusiva del concetto di genere, che tenga in particolare conto della sua natura "*socially constructed*" in costante evoluzione e possa guidare i giudici "*to adapt to new social realities and address harms experienced by individuals whose identities do not conform to binary gender categories*"[26].

Considerando alcune specifiche forme di riparazione, i lavori di Larissa Tavares De Freitas, Chiara Chisari e Tullia Penna non si pongono in prospettiva esclusivamente internazionalistica, ma aprono piuttosto ad uno sguardo multidisciplinare.

Il contributo di Larissa Tavares De Freitas analizza, da una parte, l'impegno italiano nella definizione di Piani d'Azione Nazionale per l'attuazione dell'agenda *Women, Peace and Security* del Consiglio di sicurezza ONU e, dall'altra, un progetto promosso dalla Monash University in risposta alle restrizioni imposte dai talebani all'accesso all'istruzione per le ragazze in Afghanistan. La promozione dell'educazione per le donne e le bambine è dunque considerata come esempio di misura *gender-aware* di riparazione, importante strumento di *empowerment* femminile e misura irrinunciabile per creare le condizioni per una più consistente e proficua partecipazione delle donne alle fasi di ricostruzione e mantenimento della pace, "*both as participants and as decision-makers with agency to guide their own futures*"[27].

Chiara Chisari affronta, con lo sguardo della studiosa di criminologia, il tema delle forme di riparazione simbolica e del possibile apporto dell'arte come strumento di elaborazione e 'risignificazione' dell'esperienza del conflitto da parte delle vittime, presentando *Fragmentos*, *Espacia de Arte y Memoria*, un contro-monumento realizzato a Bogotà dalle donne sopravvissute a violenza sessuale durante il conflitto colombiano. In quanto esperienza '*bottom-up*', l'arte si dimostra funzionale a creare spazi per la partecipazione delle donne, il riconoscimento corale della violenza subita, la cura e la ricostruzione dell'identità, rivelandosi dunque un potente strumento di trasformazione e di *empowerment*. Attraverso forme trasformative di riparazione, "*women rebuild a sense of agency, restore their self-worth, and redefine their identities in ways that resist the stigma and silence often associated with gender-based violence. Yet, these individual acts also carry systemic implications (…) they directly confront and destabilize the gendered structures of domination they seek to marginalize women, thus advancing social change*"[28].

La rilevanza delle riparazioni sanitarie, con particolare riferimento agli scenari di guerra asimmetrica, è oggetto dell'analisi di Tullia Penna, che propone anche alcune considerazioni sulla condizione delle donne

dall'Assemblea Generale delle Nazioni Unite con la Risoluzione 79/122 (UN Doc. A/RES/79/122 del 12 dicembre 2024).

[26] A. NICASTRO, *Between Definition and Ambiguity: Gender in the Draft Crimes Against Humanity Treaty*, in questa *Rivista*, p. 88.

[27] L. TAVARES DE FREITAS, *Italy's implementation of the women, peace and security agenda and the right to education through the example of Afghan women*, in questa *Rivista*, p. 107.

[28] C. CHISARI, *Gender-Sensitive Reparation through Art: Hammering Suffering at Fragmentos*, in questa *Rivista*, p. 117.

a Gaza, nella prospettiva della filosofia del diritto. Il contributo chiarisce come le riparazioni sanitarie si fondino sulla necessità di rispondere alla discriminazione subita da specifici gruppi di individui, al fine di rinnovare innanzitutto il modo in cui le scelte in ambito sanitario sono compiute dagli stessi e argomenta l'utilità della riflessione bioetica per meglio considerare i dilemmi di salute pubblica e le sfide morali nei contesti di guerra. Infine, precisando che i *social determinants of health* non sono limitati all'accesso alle cure mediche, ma comprendono importanti fattori quali reddito, istruzione, sicurezza alimentare, igiene, *housing*, etc.., l'Autrice illustra come "*health - as a whole well-being status, including physical, mental, and social factors - must comprise a tailor-made support for overcoming gender disparities in society (…) by echoing local communities voice and by avoiding a renewal of oppressive and colonialist interventions*"[29].

Nei diversi contributi che compongono questo numero della Rivista, ben emerge la vulnerabilità della componente femminile delle società colpite dal conflitto e l'urgenza di una risposta adeguata e volta a promuovere una metamorfosi virtuosa che conduca le donne a diventare vere e proprie protagoniste, agenti del cambiamento sistemico. Nella consapevolezza che le forme e i motori della trasformazione possono essere molteplici, lo scritto di Mario Riberi, storico del diritto, illustra l'impegno civile di cinque attrici che hanno usato la propria visibilità cinematografica per sostenere una mobilitazione etica e giuridica. In questo modo è possibile riconoscere una tradizione che trascende il cinema stesso, "*becoming a kind of moral jurisprudence – a silent covenant among those who turn visibility into responsibility, and memory into resistance. From Hepburn's clandestine performances in occupied Holland to the digital activism of Sarandon and Barrera, the lineage of women in cinema who have refused silence constitutes a parallel jurisprudence – a law of conscience articulated through gesture, voice, and public risk*"[30].

[29] T. PENNA, *The case for health reparations in contemporary asymmetric warfare. (Bio)ethical considerations on Gaza's women condition*, in questa *Rivista*, p. 157.
[30] M. RIBERI, *"Silence Is Not an Option": The Commitment of Hollywood Actresses Against War*, in questa *Rivista*, pp. 184-185.

Note sullo *status* delle vedove di guerra nella storia e nel diritto italiano [*]

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Abstract [It]: L'articolo analizza alcuni aspetti della condizione delle vedove di guerra nel corso del Primo conflitto mondiale in Italia. Partendo dalla ricostruzione della difficile situazione istituzionale e legislativa del sistema dell'assistenza pubblica tra il 1915 ed il 1918, lo scritto si sofferma in particolare sulla disciplina delle pensioni di guerra a favore delle vedove (principale strumento "riparativo" previsto dall'ordinamento giuridico del regno d'Italia) e sui dibattiti interni alla dottrina giuridica, con un *focus* sul problema della perdita dell'assegno in seguito ad un nuovo matrimonio.

Title: The status of war widows in Italian history and law.
Abstract [En]: The article examines several aspects of the condition of war widows during the First World War in Italy. Starting from a reconstruction of the difficult institutional and legislative situation of the public welfare system between 1915 and 1918, the paper focuses in particular on the regulation of war pensions granted to widows—the main "reparative" instrument provided by the legal system of the Kingdom of Italy—and on the debates within legal scholarship, with special attention to the issue of the loss of the allowance following remarriage.

Parole chiave: Prima guerra mondiale; regno d'Italia; vedove; pensioni di guerra; storia del diritto.
Keywords: First World War; Kingdom of Italy; Widows; War pensions; Legal history.

Sommario: 1. Tra «fallimento del diritto» e un nuovo ruolo sociale delle donne. **2.** Lo "Stato giuridico sociale". La creazione legislativa di un sistema di assistenza durante la prima guerra mondiale. **3.** La condizione giuridica delle vedove di guerra. **4.** Conclusioni: le vedove del sacrificio.

1. Tra «fallimento del diritto» e un nuovo ruolo sociale delle donne

Non si parla ovunque di un fallimento del diritto, almeno nelle sue formulazioni internazionali? Certo, molte regulae juris, che si credevano sacre e inviolabili, son rimaste sgretolate all'urto della realtà. Ma la fede nel diritto non si spegne, quando si pensa alla perenne rinascita del sentimento del giusto; quando si vede insorgere la coscienza dei popoli, del mondo intero, contro violazioni, efferatezze, nefandezze, per le quali i responsabili son messi al bando dell'umanità civile. Le singole formulazioni del diritto possono cadere e mutare, jura manent ! Il diritto persiste, sopravvive in eterno, distrutto risorge dalle proprie ceneri, trionfalmente. E che altro significa lo sgomento da cui il mondo civile è preso al solo pensiero che posa vincere nella lotta una forza brutale senza giustizia? Un ordine formale estrinseco senza intima equità? Quale miglior trionfo del diritto di questa sua celebrazione accorata pur nella apparente e transitoria sconfitta? E la coscienza giuridica non trionfa anche negli stessi suoi violatori, che si affannano a trovare false giustificazioni ai loro misfatti? […] è vano elevare norme di legge, supponendo nel diritto positivo la podestà astratta di imporsi a priori, sol perché diritto, in qualunque stato di moralità sociale e politica. Il diritto non vive di vita propria, che come norma tecnica; ma l'anima del diritto, che ne regola i moti e le vicissitudini, le fortune e le sfortune, è la moralità sociale, una moralità che non codifica, ma gradua individui e popoli secondo una scala insovvertibile di umani valori[1].

[*] Articolo sottoposto a referaggio.
[1] V. SCIALOJA, *Gl'insegnanti italiani e la guerra*, Imprimerie polyglotte, Roma, 1918, pp. 9-10.

Quando Vittorio Scialoja[2] pronunciava questo discorso, all'inaugurazione dell'anno accademico dell'Università popolare romana, l'Italia era entrata nel Primo conflitto mondiale da poco più di sei mesi. La frustrazione che emerge da questa citazione è la medesima che colpisce e lascia attoniti anche oggi gli operatori del diritto dinnanzi a quello che sta succedendo nel mondo: il crollo di un sistema di legalità internazionale faticosamente (e dolorosamente) costruito nel corso di decenni che si pensava (forse ingenuamente) ormai consolidato o comunque dotato di una resistenza maggiore.

Eppure - continuava ottimisticamente il celebre romanista - proprio quando tutto sembra volgere ad un *cupio dissolvi* collettivo è necessario perseverare, facendo leva sul senso etico della società e del popolo, vera e propria «anima del diritto»[3] capace di superare anche i momenti più terribili e destabilizzanti.

Partendo da questa convinzione - pur nella convulsa situazione in cui viveva - Scialoja continuava incessantemente a chiedere (anche in quell'avverso contesto) il rispetto dei principi fondamentali e a lavorare per il miglioramento del diritto interno italiano: «La più fervida concorrenza, che spingerà le nazioni alla lotta pacifica dopo la guerra, renderà sempre più necessario, per l'utilità materiale e per morale decoro del Paese, il possesso di un corpo di leggi e di un ordine giudiziario almeno non inferiori a quello degli altri Stati»[4].

Affermando ciò, il giurista torinese, più che dell'avvocato di successo o dell'accademico, indossava i panni dell'*ex* Ministro della Giustizia (carica che aveva ricoperto tra il 1909 e il 1910 nel secondo governo guidato dal pisano Sidney Sonnino) e si mostrava già idealmente proiettato verso un futuro di pace che - prima o dopo - sarebbe arrivato.

Prescindendo dalla retorica utilizzata nell'intervento citato in apertura dell'articolo (destinato ai docenti di ogni ordine e grado del regno), il bisogno di riordinare il caotico *corpus* normativo che, proprio in seguito agli eventi bellici, si era in poco tempo affastellato era in effetti urgente e unanimemente avvertito. Dopo circa cinquant'anni di relativa pace (turbata solamente dalle vicende coloniali di Eritrea e Abissinia), la Grande guerra e i connessi stravolgimenti sociali che ne scaturirono favorirono una produzione amministrativa e legislativa emergenziale che - in taluni casi - incise profondamente su interi settori dell'ordinamento, a cominciare dal diritto privato.

Come osservò tra gli altri Filippo Vassalli all'apertura del corso di Istituzioni di diritto civile all'Università di Genova (22 novembre 1918):

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[2] Per un inquadramento biografico di Vittorio Scialoja, allievo di Pasquale Stanislao Mancini e protagonista della politica italiana delle prime decadi del Novecento, si rimanda a G. CHIODI, voce *Scialoja, Vittorio*, in I. BIROCCHI, E. CORTESE, A. MATTONE, M.N. MILETTI, *Dizionario biografico dei giuristi italiani (secoli XIII-XX)* [d'ora innanzi *DBGI*], II, Il Mulino, Bologna, 2013, pp. 1833-1837 e a E. STOLFI, voce *Scialoja, Vittorio*, in *Dizionario Biografico degli Italiani* (d'ora innanzi *DBI*), 91, 2018, pp. 398 ss.

[3] V. SCIALOJA, *Gl'insegnanti italiani e la guerra*…, *cit.*, p. 10.

[4] *Ibid.*, p. 10.

Chi volga a ricercare con quali effetti l'immane cataclisma della conflagrazione mondiale è passato sugli spiriti e sulle forme del diritto privato, indaga un fenomeno vasto, di movenze tumultuose, senza alcun comparabile precedente, qual'è costituito dalle miriadi di leggi emanate negli ultimi quattro anni e mezzo (e specialmente dagli organi di governo dello Stato): fenomeno il quale ha un nome «legislazione di guerra», non meno per intensità, che per la novità de' principi introdotti con travolgente audacia nella compagine del nostro ordinamento giuridico[5].

In poche righe, il futuro protagonista della codificazione civile del 1942, coglieva immediatamente la portata innovativa che la legislazione di guerra aveva portato all'ordinamento giuridico, grazie soprattutto ai provvedimenti dei Governi Salandra (1914-1916), Boselli (1916-1917) e Orlando (1917-1919) e in virtù di un'ampia delegazione dei poteri legislativi (già avvenuta in passato in analoghe circostanze[6]) da parte del Parlamento[7].

Ad esempio, proprio in quegli anni furono introdotti nell'ordinamento due nuovi soggetti giuridici: lo straniero nemico, e lo straniero alleato. Tali categorie erano funzionali a limitare i diritti dei primi, scongiurando il rischio - nel contempo - che le limitazioni sostanziali e processuali portate dallo stato di guerra intralciassero i rapporti e gli scambi commerciali con i secondi. Fu poi di fatto sospesa l'efficacia dell'art. 3 del codice civile, che assicurava agli stranieri gli stessi diritti civili riconosciuti ai cittadini del

[5] F. VASSALLI, *Della legislazione di guerra e dei nuovi confini del diritto privato*, in *Rivista del diritto commerciale*, n. XVII, 1919, p. 1 (ripubblicato in F. VASSALLI, *Studi giuridici*, II, Soc. ed. del «foro italiano», Roma, 1939, p. 377 ss., di seguito si citerà questa versione).

[6] Non era un fatto inedito che le autorità italiane ricorressero, in situazioni di crisi, a misure straordinarie che includevano l'assunzione temporanea di prerogative normalmente riservate al potere legislativo. Guardando anche alla precedente esperienza sabauda, pochi mesi dopo la promulgazione dello Statuto albertino nel 1848 alcuni parlamentari proposero una legge che delegava al governo poteri eccezionali per affrontare l'emergenza derivante dalla guerra con l'Austria. Sebbene lo Statuto non prevedesse esplicitamente tale possibilità, nemmeno la escludeva: la sua natura flessibile e il silenzio su questo punto permisero la formazione di un precedente, che si trasformò progressivamente in una prassi accettata, dando origine a un principio non formalizzato, ma facente parte della costituzione materiale italiana. Cfr. R. BRACCIA, *La legislazione della Grande guerra e il diritto privato*, in A. SCIUMÉ (a cura di), *Il diritto come forza, la forza del diritto. Le fonti in azione nel diritto europeo tra medioevo ed età contemporanea*, Giappichelli, Torino, 2012, p. 188. Già nel 1859, ad esempio, in concomitanza con l'inizio della seconda guerra di indipendenza, il governo guidato da Urbano Rattazzi aveva chiesto ed ottenuto pieni poteri legislativi, grazie ai quali riuscì a riformare in pochi mesi il codice di procedura civile e il codice penale e di procedura penale, ponendo le basi al futuro ordinamento giuridico unitario; sul punto di rimanda a S. VINCIGUERRA, *I codici penali sardo-piemontesi del 1839 e del 1859*, in S. VINCIGUERRA (a cura di), *I codici preunitari ed il codice Zanardelli*, Cedam, Padova, 1999, p. 359.

[7] Cfr. la legge del 22 maggio 1915, n. 671. Nel panorama giuridico coevo italiano non mancarono voci critiche nei confronti dell'arbitrio legislativo che fu conferito al governo. Un allievo di Scialoja come Roberto De Ruggiero, già rettore dell'Università di Cagliari e futuro preside della Facoltà di Giurisprudenza napoletana, non esitò a contestare apertamente la «[…] delegazione dei poteri fatta dal Parlamento al Governo in modo sì ampio, quale non si ricorda in tutta la nostra storia parlamentare; o dall'uso eccessivo che il Governo ha fatto della delegazione, legiferando su ogni materia privata e pubblica, e persino a Camera aperta, senz'alcun controllo o correttivo e sottratto orami per sempre a qualsiasi sindacato, poiché quello più efficace della pubblica opinione mediante la stampa è stato oltre ogni limite di necessità soffocato con la censura […]. Altri Stati, più di noi custodi gelosi di queste libertà, non videro - pur essendo più intensamente impegnati nella lotta - né sospese né rese atrofiche le funzioni degli organi, che secondo la costituzione son deputati a creare diritto»; R. DE RUGGIERO, *Leggi di guerra nel diritto privato italiano*, in *La legislazione di guerra. Conferenze tenute nell'anno 1915-1916*, Stab. Tipogr. diritto e giuris., Napoli, 1916, pp. 120-121. Per un inquadramento della figura di De Ruggiero, esponente di spicco del "Gotha" della civilistica italiana vissuta a cavallo tra Ottocento e Novecento e firmatario nel 1925 del *Manifesto degli intellettuali antifascisti*, si rimanda a A. DI MAJO, voce *De Ruggiero, Roberto*, in *DBGI*, I, pp. 716-717 e A. DE NITTO, voce *De Ruggiero, Roberto*, in *DBI*, 39, 1991, pp. 262-267.

regno[8]. Questa disposizione infatti, di ispirazione liberale e sostenuta a suo tempo da Pasquale Stanislao Mancini[9], veniva ora considerata non più rispondente alle nuove contingenze[10]. Modifiche significative andarono poi a coinvolgere istituti e concetti cardine del diritto civile, come quello della cittadinanza, della responsabilità contrattuale e aquiliana, della forza maggiore e dell'eccessiva onerosità sopravvenuta, della colpa e, in generale, della proprietà privata[11].

Al fine di rispondere alle nuove sfide che il conflitto presentava, pure il diritto di famiglia ne uscì profondamente cambiato. Si dovette ad esempio consentire la stipulazione di atti in assenza fisica del diretto interessato (sovente impegnato al fronte) anche in ipotesi che in precedenza il sistema giuridico escludeva. Si spiega in questo modo, in totale opposizione alla tradizione giuridica recente, l'ammissione della possibilità di contrarre un matrimonio per procura[12]. Il gran numero di morti che presto cominciò a comparire sui bollettini della prima linea indusse inoltre il governo a modificare anche il diritto successorio, limitando le linee di successione legittima a favore dello Stato, al fine di «escludere dalla successione ab intestato i cosiddetti Erben lachenden (cioè "gli eredi che ridono della morte del loro lontano parente") […]»[13].

Considerata la portata e l'eterogeneità del fenomeno, la dottrina cominciò presto a occuparsene. Si moltiplicarono gli studi specifici, tra i quali spiccavano quelli di Alfredo Ascoli (che negli anni del conflitto tenne una rubrica fissa dedicata alle "*Questioni di Guerra*" all'interno della Rivista di diritto)[14], di Roberto

[8] Cfr. *Codice civile del regno d'Italia*, Stamperia reale, Torino 1865 (d'ora innanzi solo *Codice civile 1865*), art. 3 (p. 1): «Lo straniero è ammesso a godere dei diritti civili attribuiti ai cittadini».

[9] Su Pasquale Stanislao Mancini (1817-1888) si rimanda a C. STORTI, voce *Mancini, Pasquale Stanislao*, in *DBGI*, II, pp. 1244-1248.

[10] Come ha messo il evidenza - tra gli altri - Michele Pifferi, la previsione contenuta nel codice del 1865 rispondeva ad una visione politica cosmopolita, pensata per uno Stato come il regno d'Italia fisiologicamente proiettato verso l'estero e con una popolazione fortemente propensa a emigrare. Vi era quindi a monte una concezione che non percepiva lo straniero come una minaccia esiziale, cfr. M. PIFFERI, *Paure dello straniero e controllo dei confini. Una prospettiva storico-giuridica*, in *Quaderno di storia del penale e della giustizia*, n. 1, 2019, p. 183, e pure V. CALABRÒ, *Cittadini o stranieri? Diritti riconosciuti e libertà negate nel regno d'Italia*, in *Atti della Accademia Peloritana dei Pericolanti - Classe di Scienze giuridiche, economiche e politiche*, 87, 2018, pp. 140-141.
Una panoramica sulle vicende del principio di reciprocità tra Ottocento e Novecento è stata ricostruita da C. STORTI, *Il ritorno alla reciprocità di trattamento. Profili storici dell'art. 16 Disp. Prel. al Codice Civile del 1945*, in *I cinquant'anni del Codice Civile*, Giuffrè, Milano, 1992, pp. 500-557.

[11] Una completa, approfondita e puntuale panoramica è offerta da F. ROGGERO, *«Uno strumento molto delicato di difesa nazionale». Legislazione bellica e diritti dei privati nella prima guerra mondiale*, Historia et Ius, Roma, 2020, pp. 1-152.

[12] In precedenza, infatti, questa particolare modalità di stipulazione del matrimonio veniva ammessa solo per la famiglia reale: «Nei matrimoni del re e della famiglia reale l'uffiziale dello stato civile è il presidente del senato del regno. Il re determina il luogo della celebrazione, la quale può anche farsi per procura», *Codice civile 1865*, art. 99, p. 27.

[13] R. BRACCIA, *La legislazione della Grande guerra e il diritto privato*…, *cit.*, p. 204.

[14] Su Ascoli, oltre alla risalente voce del *Dizionario Biografico degli Italiani* curata da Roberto Abbondanza (R. ABBONDANZA, voce *Ascoli, Alfredo*, in *DBI*, 4, 1962, pp. 377 ss.), si veda anche P. FEMIA, voce *Ascoli, Alfredo*, in *DBGI*, I, pp. 111-114.

De Ruggiero[15] e di Pietro Cogliolo[16], che dedicò al tema il ponderoso volume *La legislazione di guerra nel diritto civile e commerciale con una parte speciale sopra la colpa, i danni, la forza maggiore*, pubblicato in prima edizione del 1916 e poi ristampato, aggiornato e ampliato, nel 1917[17].

Fu infine Vassalli, con la sua già citata prolusione del 1918 (pronunciata pochi giorni dopo la firma dell'armistizio da parte della Germania e la cessazione delle ostilità) a prendere atto che il panorama giuridico era ormai radicalmente cambiato e che i confini tra il diritto privato e il diritto pubblico non erano più quelli individuati nel 1914[18].

Se si può comprendere lo sconcerto e lo spaesamento degli accademici e della classe forense coeva a fronte di questa produzione normativa alluvionale che coinvolse ogni ambito dell'ordinamento giuridico, questo periodo rappresentò «un autentico laboratorio per inaugurare una vera e propria frattura tra il "mondo di ieri", precedente la guerra, ed il periodo storico che si apriva nell'immediato dopoguerra»[19]. Un laboratorio dal quale, prima su un piano sociale poi su un piano più strettamente giuridico, la figura della donna uscì profondamente cambiata.

Lo svuotamento delle campagne per il richiamo al fronte di un numero enorme di uomini, obbligò le donne a prendere il loro posto, facendosi carico - oltre al ruolo di cura della casa e della famiglia - del lavoro agricolo. Inoltre, nelle città, esse furono coinvolte in massa nelle attività dell'industria bellica, svolgendo una vasta gamma di compiti, inclusi quelli di tipo amministrativo[20]. Come affermava il 12 dicembre 1916 alla Camera il deputato Amedeo Sandrini:

Mai, come in questo momento, è stata esperimentata la virtù della donna nostra, che non soltanto negli ospedali e nelle multiformi manifestazioni dell'organizzazione civile, ha dato, con generoso spirito di sacrifizio, le sublimi energie del suo cuore in aiuto di ogni sofferenza, di ogni miseria; che non soltanto negli stabilimenti e nelle officine, dove si apprestano i mezzi necessari alla guerra, ha portato copioso contributo di lavoro, ma nelle famiglie, negli uffici e nelle aziende ha sostituito i mariti e i congiunti chiamati alle armi […][21].

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15 R. DE RUGGIERO, *Leggi di guerra nel diritto privato italiano*, in *Diritto e giurisprudenza*, 31, 1916, pp. 171 ss.

16 Sulla figura di Pietro Cogliolo (1859-1940), professore di diritto romano e insigne privatista e commercialista, e in particolare sul suo impegno scientifico negli anni dello sforzo bellico italiano, cfr. R. BRACCIA, *La legislazione della Grande guerra e il diritto privato*…, *cit.*, pp. 195-202. Per un prospetto biografico si rimanda sempre a R. BRACCIA, voce *Cogliolo, Pietro*, in *DBGI*, I, pp. 558-559, e a F. FABBRINI, voce *Cogliolo, Pietro*, in *DBI*, 26 (1982), pp. 635-638.

17 P. COGLIOLO, *La legislazione di guerra nel diritto civile e commerciale: con una parte speciale sopra la colpa, i danni, la forza maggiore*, Unione tipografico-editrice torinese, Torino, 1916, pp. 322 e P. COGLIOLO, *La legislazione di guerra nel diritto civile e commerciale: con una parte speciale sopra la colpa, i danni, la forza maggiore. Raccolta completa di tutti i decreti-legge in rapporto al diritto privato*, Unione tipografo-editrice torinese, Torino, 1917², pp. 676.

18 F. VASSALLI, *Della legislazione di guerra e dei nuovi confini del diritto privato*…, *cit.*, pp. 386-403.

19 A. IANNARELLI, *Proprietà e beni. Saggi di diritto privato*, Giappichelli, Torino, 2018, pp. 9-10.

20 P. WILLSON, *Italiane. Biografia del Novecento*, Laterza, Bari-Roma, 2011, pp. 120-121.

21 *Atti del Parlamento Italiano*, *Discussioni della Camera dei Deputati*, XXIV Legislatura, Sessione 1913-1917 (12/12/1916-03/03/1917), Volume XI, I Sessione dal 12/12/1916 al 03/03/1917, Tipografia Camera dei Deputati, Roma, 1917, p. 11573.

Le guerre in effetti - in particolare nel Novecento - hanno rappresentato uno spartiacque nella storia dell'emancipazione femminile: veri e propri momenti di rottura i cui effetti non sono quasi mai terminati con la stipulazione di un armistizio o un trattato di pace. A questo proposito, il primo conflitto mondiale ha rappresentato - per la realtà italiana - un caso emblematico, con conseguenze particolarmente significative.

Non è infatti un caso che, proprio al termine del conflitto, con la legge n. 1176 del 17 luglio 1919 si sia abolito l'istituto dell'autorizzazione maritale[22]. È pur vero che esso - che rendeva la moglie giuridicamente dipendente dal marito - era già stato intaccato negli anni precedenti[23], ma la sua definitiva cancellazione dall'ordinamento fu presentata all'opinione pubblica quasi come un riconoscimento per il ruolo che le donne italiane avevano saputo interpretare nei drammatici momenti appena trascorsi. Come osservò infatti la commissione nominata dal Senato per l'esame di questo progetto della legge: «Fu detto che la donna con mirabili prove di energia e di idoneità date durante la guerra, supplendo in molteplici e svariatissime guise gli uomini trattenuti al fronte, si è guadagnata il suo brevetto di capacità»[24]. Tale provvedimento, inoltre, apriva la strada anche all'accesso a numerosi professioni prima precluse, a cominciare dall'avvocatura.

Siamo certamente ancora lontani dal raggiungimento di una piena parità giuridica (anche solo formale) con gli uomini (per la quale fu necessario attendere decenni, un secondo conflitto mondiale e una nuova forma istituzionale fondata sulla Costituzione del 1948) ma gli anni tra il 1914 ed il 1918 rappresentarono un momento di passaggio fondamentale, in grado di operare dei rovesciamenti - seppur parziali e inizialmente in forma di eccezione - ad un ordine sociale borghese che si era consolidato nel corso di tutto il XIX secolo.

Partendo da questa constatazione, l'articolo intende proporre alcune osservazioni sulla posizione giuridica delle vedove di guerra.

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[22] Si abrogava così - tra le altre cose - l'articolo 134 del codice civile del 1865, a tenore del quale la moglie non avrebbe potuto validamente «donare, alienare beni immobili, sottoporli ad ipoteca, contrarre mutui, cedere e riscuotere capitali, costituirsi sicurtà, nè transigere o stare in giudizio relativamente a tali atti, senza l'autorizzazione del marito», *Codice civile 1865*, art. 134, p. 35.

[23] In particolare, l'autorizzazione maritale era già stata dichiarata non necessaria per la presentazione della richiesta di prestiti di guerra e per altre operazioni finanziarie, cfr. P. WILLSON, *Italiane…*, *cit.*, p. 124. Per un'accurata ricostruzione della genesi di tale legge e dei suoi contenuti si veda M. FIORAVANZO, *L'autorizzazione maritale e la sua abrogazione*, in *Cittadinanze incompiute. La parabola dell'autorizzazione maritale*, S. BARTOLONI (a cura di), Viella, Roma, 2018, pp. 223-242 e F. MASTROBERTI, *La "Legge Sacchi" sulla condizione giuridica della donna: grande riforma o «modestissima leggina»?*, in *Il Mediterraneo e la grande guerra*, F. MASTROBERTI, S. VINCI (a cura di), (Quaderni del Dipartimento Jonico, 4/2016), pp. 45-55. Si veda ancora M.R. DI SIMONE, *La condizione femminile dal codice del 1865 al codice del 1942: spunti per una riflessione*, in *I cinquant'anni del codice civile*, Giuffrè, Milano, 1993, II, pp. 562 ss.

[24] *Relazione della Commissione speciale composta dai senatori Mortara, Bensa, De Giudice, Filomusi Guelfi e Scialoja sul disegno di Legge presentato dal Ministro di Grazia, Giustizia e dei Culti nella Tornata del 10 marzo 1919 ("Disposizioni relative alla capacità giuridica della donna)*, in *Atti Parlamentari*, Senato del regno, XXIV Legislatura (1a sessione 1913-19), Documenti, Disegni di Legge e relazioni, p. 5

Tra il 1915 ed il 1918 il regno d'Italia vide infatti la mobilitazione di milioni di uomini e oltre 650.000 tra essi persero la vita. In questo contesto, la condizione delle vedove e il loro sostentamento rappresentò uno dei problemi sociali più complessi e drammatici del conflitto sul fronte interno e il loro lutto (da aspetto meramente personale) fu traslato sul piano pubblico, divenendo simbolo del sacrificio patriottico, per molti aspetti assimilabile a quello di coloro che erano incorsi in menomazioni o mutilazioni nel corso del combattimento.

2. Lo "Stato giuridico sociale". La creazione legislativa di un sistema di assistenza durante la Prima guerra mondiale

Le modifiche all'ordinamento giuridico introdotte nel corso della Prima guerra mondiale non si limitarono al diritto privato ma coinvolsero (anche più radicalmente) i meccanismi di tutela sociale. Ciò ha in effetti portato alla creazione di un sistema di pubblica assistenza, strutturato per la prima volta su larga scala, secondo logiche di massa. Dal 1915 in avanti, infatti, a fronte di un numero di uomini richiamati al fronte costantemente in crescita e alla presa di coscienza che il conflitto non sarebbe durato solo pochi mesi come auspicato in un prima tempo, aumentava l'esigenza di supporto per le famiglie rimaste a casa, così come per i reduci mutilati o rimasti invalidi.

A questo proposito, la politica normativa attuata dal regno in questo ambito si può distinguere in tre fasi, da cui si può evincere una progressiva evoluzione della concezione del ruolo dello Stato nei confronti dei combattenti e delle loro famiglie[25].

La prima fase, che va dall'inizio del conflitto fino al giugno 1917, fu caratterizzata da un intervento statale piuttosto marginale e di natura prevalentemente sussidiaria. In questo periodo, infatti, lo Stato si limitò principalmente a sostenere economicamente le iniziative di natura privata e patriottica, promosse da enti e associazioni, nate per offrire sostegno materiale e morale ai militari al fronte e ai loro nuclei familiari. L'intervento pubblico si concretizzava essenzialmente nella distribuzione regolare di sussidi giornalieri alle famiglie dei militari e nel coordinamento dell'utilizzo dei fondi raccolti attraverso la beneficenza pubblica.

A partire dal giugno 1917 si ebbe invece un mutamento nella politica legislativa e un deciso ampliamento delle funzioni dello Stato nel settore assistenziale. Il sacrificio collettivo richiesto dalla guerra indusse infatti le istituzioni a concepire l'assistenza nei confronti dei cittadini mobilitati come un vero obbligo morale e politico. Pertanto l'intervento statale si intensificò sia sotto il profilo quantitativo sia sotto quello qualitativo con l'incremento degli importi dei sussidi giornalieri, l'introduzione di contributi straordinari

[25] Cfr. *L'assistenza di guerra in Italia: assistenza militare, pensioni di guerra*, Terza conferenza interalleata per la protezione degli invalidi di guerra, Società anonima poligrafica italiana, Roma, 1919, pp. 26 ss.

per le famiglie più disagiate e di nuove forme di protezione rivolte agli invalidi di guerra e agli orfani. Rientra in questo filone anche l'istituzione del Ministero per l'Assistenza militare e le Pensioni di guerra. In sostanza, si cessò di considerare l'assistenza ai militari come un atto caritatevole di beneficienza pubblica, ma come un dovere istituzionale vero e proprio.

Infine, con la conclusione del conflitto e la vittoria militare, il legislatore italiano si trovò a doversi far carico delle sfide portate dal dopoguerra e, in questo senso, accanto alla prosecuzione delle misure assistenziali già avviate (sostegni agli invalidi, alle famiglie dei caduti, e ai prigionieri), si manifestò l'urgenza di promuovere il reinserimento socio-economico dei reduci, anche tramite dell'Opera Nazionale per i Combattenti, impegnata nel sostegno alla reintegrazione professionale degli ex-militari[26].

Non può essere questa la sede per esaminare nel dettaglio le specifiche peculiarità delle fasi sopra individuate ma, nel complesso, si può affermare che un aspetto fondamentale dell'intero sistema di assistenza era costituito dall'istituto dalle pensioni di guerra, destinate principalmente - oltre naturalmente ai superstiti rimasti invalidi e mutilati - alle vedove e agli orfani dei soldati.

Volendo inquadrare brevemente la storia di questo istituto assistenziale (che affondava le sue radici nella normativa francese di inizio Ottocento) è necessario partire dalla legge n. 667 del 23 giugno 1912. Tale provvedimento era stato adottata a seguito del conflitto italo-turco per il controllo della Tripolitania e la Cirenaica (1911-1912)[27] che aveva palesato l'esigenza di interventi più adeguati e mirati a tutela dei militari coinvolti e dei loro familiari[28]. Per le vedove dei militari (e per altre categorie di congiunti[29]), si prevedeva una quota pari alla alla metà della pensione di prima categoria che sarebbe spettata al militare morto in guerra[30].

Questa legislazione rappresentava un'evoluzione significativa per la materia, in quanto veniva per la prima volta a differenziarsi la configurazione giuridica (e il conseguente trattamento economico) dell'invalidità per fatto di guerra da quella dovuta per le invalidità causa dal servizio ordinario.

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[26] Cfr. F. BONELLI, voce *Beneduce, Alberto*, in *DBI*, 8, 1966, pp. 462-463.

[27] Su questo conflitto e, in generale, sulla politica coloniale in Libia da parte del regno d'Italia tra la fine del XIX secolo e i primi decenni del XX si rimanda alla approfondita analisi di N. LABANCA, *La guerra italiana per la Libia.1911-1931*, Il Mulino, Bologna, 2012, pp. 67 ss.

[28] *Legge 23 giugno 1912, n. 667*, che istituisce pensioni privilegiate di guerra per gli ufficiali e militari di truppa del R. esercito e della R. marina, art. 1: «Sono istituite pensioni privilegiate di guerra per gli ufficiali e militari di truppa del Regio esercito e della Regia marina combattenti nella campagna di guerra italo-turca e per tutte le altre future campagne di guerra».

[29] Come i figli minori, i genitori quinquagenari, le madri vedove, i fratelli minorenni orfani e le sorelle orfane minorenni nubili, cfr. *Legge 23 giugno 1912, n. 667*…, *cit.*, art. 3.

[30] *Ibid.*, art. 3. In generale su questa legge si rimanda a P. PIRONTI, *L'evoluzione delle pensioni di guerra italiane dalle origini fino all'avvento del fascismo*, in N. LABANCA (a cura di), *Guerra e disabilità. Mutilati e invalidi italiani e primo conflitto mondiale*, Unicopli, Milano, 2016, pp. 211-232.

In precedenza infatti la disciplina trovava la sua fonte nel *Testo Unico* di cui al regio decreto n. 70 del 21 febbraio 1895 (cd "*Testo unico delle leggi sulle pensioni civili e militari*")[31]. In particolare, l'articolo 119 di questo decreto prevedeva indifferentemente che le mogli dei militari deceduti in battaglia o durante un servizio comandato avessero diritto a una pensione annua e che il suo importo variasse a seconda del grado del deceduto: per le vedove degli ufficiali, la misura corrispondeva alla metà del massimo che sarebbe spettato al marito in caso di invalidità permanente, per quelle dei militari di truppa, alla metà del massimo previsto per il grado di appartenenza[32]. È significativo che questo diritto prescindesse dalla durata del servizio prestato dal militare (e anche del matrimonio, a differenze di quanto previsto per le altre pensioni[33]).

La tutela si estendeva anche ai casi in cui il decesso non fosse immediatamente riconducibile al combattimento diretto, ma derivasse da ferite riportate in servizio, da "accidenti di guerra" o da malattie contratte a causa delle condizioni ambientali e sanitarie legate all'attività militare.

A limitare l'accesso a tale tutela vi era però un'importante eccezione normativa, sancita dall'art. 125 del *Testo Unico*: la vedova perdeva infatti ogni diritto alla pensione o all'assegno se il matrimonio fosse stato contratto senza la preventiva autorizzazione prevista dai regolamenti militari[34].

La novella realizzata nel 1912 non era pensata per una guerra in corso, quanto per assicurare un sussidio ai militari reduci da un conflitto appena terminato, il cui bilancio era rimasto inferiore al numero di diecimila tra morti e feriti.

Lo scoppio dopo pochi anni del conflitto mondiale - con numeri di tutt'altra entità - rese immediatamente manifesta l'inadeguatezza di questa normativa: le migliaia di feriti che tornavano quotidianamente dal campo di battaglia, le difficoltà e le lungaggini nell'istruzione delle pratiche e nella documentazione delle lesioni da combattimento ingolfarono presto gli uffici ministeriali e causarono significativi ritardi nella liquidazione degli assegni[35]. La nuova guerra, industrializzata e "massificata", richiedeva una nuova legislazione, burocraticamente più semplificata e aggiornata anche sul versante della casistica dei danni e delle menomazioni che i soldati riportavano a causa dell'impiego di inediti e distruttivi armamenti[36].

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[31] *Regio decreto 21 febbraio 1895, n. 70*, che approva il testo unico delle leggi sulle pensioni civili e militari (d'ora innanzi solo *Testo Unico 1895*).

[32] *Ibid.*, art. 119.

[33] Si veda quanto prevedeva ad esempio per le pensioni ordinarie (non legate cioè ad invalidità di guerra) la *Legge 23 giugno 1912, n. 667*…, *cit.*, art. 104: «La vedova dell'impiegato civile o del militare, contro la quale non sia stata pronunziata sentenza definitiva di separazione di corpo per colpa di lei, ha diritto ad una parte della pensione di cui godeva il marito o che gli sarebbe spettata, purché al tempo in cui questi cessò dal servizio effettivo, dalla disponibilità o dall'aspettativa, fossero trascorsi due anni dal giorno del matrimonio, ovvero sia nata prole, ancorché postuma, di matrimonio più recente».

[34] *Testo Unico 1895*, art. 125.

[35] F. QUAGLIAROLI, *Le pensioni per gli invalidi della Prima guerra mondiale*, in *Contemporanea*, n. 1 (gennaio-marzo), 2016, p. 47.

[36] Cfr. P. PIRONTI, *Il parlamento italiano e l'assistenza alle vittime di guerra (1915-1918)*, in M. MERIGGI (a cura di), *Parlamenti di guerra (1914-1915)*, Federico II University press, Napoli, 2017, pp. 158-165.

Per ovviare in parte a queste problematiche, già col decreto luogotenenziale 27 giugno 1915 n. 1103 (modificato poi da un altro provvedimento del 22 agosto successivo), il Tesoro fu autorizzato e concedere degli acconti sulle pensioni privilegiate di guerra, ancora da liquidare, in favore delle vedove e degli orfani dei militari morti in combattimento o in seguito alle ferite ivi riportate[37].

La situazione peggiorò nel 1917. La stasi riformistica iniziale in tema di assistenza poteva forse giustificarsi per una certa impreparazione da parte della classe politica italiana la quale, come quella di gran parte degli altri Paesi europei, non si aspettava che la guerra si sarebbe protratta così a lungo (ed in modo così sanguinoso); tuttavia, dopo le dodici battaglie sull'Isonzo e la disfatta di Caporetto, non era più sostenibile procrastinare un intervento strutturale.

Innanzitutto si volle centralizzare la gestione dell'assistenza istituendo, con regio decreto n. 1812 del 1° novembre 1917, il *Ministero della assistenza militare e delle pensioni di guerra*[38]. In precedenza, infatti, essa faceva perno su tre centri decisionali differenti: il Ministero della Guerra, che si occupava degli accertamenti sanitari e amministrativi, la Corte dei conti, competente per la risoluzione delle questioni giuridiche e il Ministero del tesoro, cui spettava l'erogazione materiale delle pensioni.

A dirigere il nuovo ministero furono chiamati due giuristi: prima Leonida Bissolati e poi, dopo la fine della guerra, Ugo da Como, avvocato e allievo di Zanardelli[39]. Bissolati era stata una delle più influenti voci politiche dell'interventismo, e allo scoppio della guerra, all'età di 58 anni, si era arruolato volontario negli alpini, venendo anche decorato con la medaglia d'argento per le sue azioni[40]. Anche la successiva scelta di Ugo Da Como non era casuale. Pochi mesi prima della creazione del ministero della assistenza egli aveva infatti denunciato pubblicante la problematica situazione dei combattenti sulla *Nuova Antologia*[41], mettendo in evidenza «le carenze della normativa italiana nel campo dell'assistenza alle vedove e agli orfani e come si dovesse notevolmente sveltire la procedura per la concessione delle pensioni»[42].

Il *Ministero per l'assistenza militare e le pensioni di guerra* aveva quindi il compito di coordinare e migliorare la legislazione che regolava la «complessa materia dell'assistenza ai danneggiati della guerra»[43] e, secondo quanto previsto dal decreto luogotenenziale n. 2067 del 6 dicembre 1917, avrebbe dovuto preoccuparsi principalmente dell'erogazione di soccorsi e sussidi, sia ordinari che straordinari, alle famiglie dei militari

[37] Cfr. il *decreto luogotenenziale 27 giugno 1915, n. 1103*, riguardante gli scomparsi nella guerra italo-austriaca e gli acconti di pensione privilegiata di guerra.
[38] Cfr. *regio decreto 1 novembre 1917, n. 1812*, col quale, per la durata della guerra, e per un anno successivo alla pubblicazione della pace, è istituito il Ministero dell'assistenza militare e delle pensioni di guerra.
[39] L. ROSSI, voce *Ugo, Da Como*, in *DBI*, 31, 1985, pp. 581-583.
[40] A. ARA, voce *Bissolati, Leonida*, in *DBI*, 10, 1968, pp. 694-700.
[41] Cfr. U. DA COMO, *Appunti sulle pensioni di guerra*, in *Nuova Antologia*, n. 190, 1917, fasc. 1093, pp. 305-319.
[42] L. ROSSI, voce *Ugo, Da Como*…, cit., p. 582.
[43] *L'assistenza di guerra in Italia: assistenza militare, pensioni di guerra*…, cit., p. 26.

chiamati alle armi, nonché degli eventuali acconti[44]. Rientrava sempre nelle sue attribuzioni anche l'applicazione della legge del 18 luglio 1917, n. 1143, dedicata alla protezione degli orfani di guerra, e della legge del 25 marzo 1917, n. 481, con la quale era stata istituita l'*Opera Nazionale per la protezione e l'assistenza degli invalidi di guerra*. Infine, tra i suoi compiti vi era la distribuzione delle somme raccolte attraverso offerte da destinare alle famiglie bisognose dei militari morti in guerra o rimasti feriti.

Con l'istituzione di questo ente si cercò quindi di razionalizzare - per quanto possibile - un apparato dal quale dipendeva la sopravvivenza fisica di decine di migliaia di persone e che aveva mostrato di non essere in grado, negli anni precedenti, di essere all'altezza delle sfide contemporanee.

3. La condizione giuridica delle vedove di guerra

Come gran parte dell'ordinamento giuridico, anche la figura della vedova di guerra venne direttamente impattata dalla legislazione emergenziale emanata tra il 1915 ed il 1918. La stessa configurazione giuridica di questa categoria venne assai ampliata rispetto alle strette gabbie del diritto civile, al fine di consentire ad un numero maggiore di soggetti di poter beneficiare dei diritti connessi a questo *status*.

In effetti, il riconoscimento del diritto alla pensione per la moglie e i figli di un militare deceduto a causa di eventi bellici trovava la sua disciplina, in linea generale, nel *Testo Unico* del 1895, che ne subordinava il godimento al rispetto di alcune condizioni specifiche.

Innanzitutto si richiedeva che il vincolo di coniugio con il militare si presentasse - da un punto di vista strettamente legale - valido e regolare e che, pertanto, fosse stato autorizzato secondo le modalità previste dai regolamenti militari vigenti. Costituiva poi presupposto indefettibile che la celebrazione risalisse a prima dell'insorgenza delle lesioni che avevano causato la morte del militare e che non fosse stata nel frattempo emanata una sentenza definitiva di separazione con addebito a carico della moglie[45].

I figli, invece, potevano accedere al beneficio solo se fossero nati all'interno del matrimonio o sono stati successivamente legittimati.

In sostanza, il *Testo Unico* del 1895 limitava il riconoscimento della pensione privilegiata di guerra ai soli familiari riconosciuti dalla legge civile e ai figli legittimi (o ad essi equiparati) secondo le regole del diritto comune, sul presupposto che un ulteriore allargamento soggettivo avrebbe finito per incentivare unioni non riconosciute dalla legge[46].

Senza entrare nel merito della posizione assunta dal legislatore italiano di fine Ottocento, ci si limita ad osservare che se essa era socialmente sostenibile in tempo di pace (o, al più, durante i limitati conflitti

[44] Cfr. *decreto luogotenenziale 6 dicembre 1917, n. 2067*, concernente provvedimenti per l'assistenza militare e per le pensioni di guerra, art. 1.
[45] Cfr. *Testo Unico 1895*, artt. 104 ss. e 125 ss.
[46] Cfr. *L'assistenza di guerra in Italia: assistenza militare, pensioni di guerra*…, cit., p. 724.

coloniali) non poté invece reggere davanti alle dimensioni ed alla complessità della Grande guerra. Infatti, dopo l'impiego dell'esercito regolare e delle riserve ordinarie, la mobilitazione che fu realizzata coinvolse un numero inedito di cittadini comuni (anche al di là l'età normalmente reclutabile) con la conseguenza che in molti casi relazioni di fatto familiari vennero bruscamente interrotte senza che vi fosse stato il tempo di formalizzarle legalmente.

Questa realtà spinse progressivamente il governo ad ampliare i criteri per il riconoscimento della pensione a vedove e figli, anche andando oltre i limiti tradizionali del diritto matrimoniale e familiare stabiliti dal codice civile e dalla normativa precedente.

Tale evoluzione trovò concreta espressione nel decreto luogotenenziale del 12 novembre 1916, n. 1598, e fu completata da quello del 27 ottobre 1918, n. 1726[47]. Sulla base dell'esperienza accumulata nei mesi e negli anni precedenti, questi ed altri provvedimenti riconobbero efficacia e rilevanza, almeno ai fini della concessione di aiuti e sussidi, anche a rapporti familiari non formalmente sanciti.

La prima cosa da fare era consentire ai militari, dopo la partenza al fronte, di poter comunque contrarre matrimonio anche se non fisicamente presenti dinnanzi all'ufficiale di stato civile. In effetti, tra le prime misure adottate in risposta allo stato di guerra vi fu proprio il riconoscimento della possibilità per chiunque fosse al seguito dell'esercito per motivi di servizio, di sposarsi mediante procura[48]. Questa modalità, che nel diritto comune era ammessa solo in casi eccezionali, venne estesa in modo più ampio per far fronte all'urgenza del momento. In questo modo si consentiva, attraverso una procedura semplificata, non solo di rispettare impegni morali basati su promesse reciproche di matrimonio, ma anche di regolarizzare situazioni affettive e offrire alla donna - precedentemente considerata solo compagna di fatto - un fondamento giuridico per accedere eventualmente alla pensione.

Come si è visto, un requisito previsto dall'articolo 125 del *Testo Unico* del 1895 per accedere (in caso di morte del coniuge) allo *status* vedovile era che il matrimonio fosse stato autorizzato secondo le modalità indicate nei regolamenti militari. Se già in origine tale obbligo non si applicava a tutte le categorie di militari (ad esempio ne erano esclusi gli ufficiali di complemento e di riserva), nel corso del primo anno del conflitto esso fu abolito per tutti i militari di truppa (con la momentanea eccezione - superata dopo alcuni mesi - dei Carabinieri e degli ufficiali di carriera), riconoscendo così validità, ai fini pensionistici, anche alle unioni contratte senza il previo assenso delle gerarchie militari.

[47] Cfr. *decreto luogotenenziale 12 novembre 1916, n. 1598*, contenente aggiunte e modificazioni alle disposizioni vigenti sulle pensioni privilegiate di guerra, e *decreto luogotenenziale 27 ottobre 1918, n. 1726*, recante norme per la concessione delle pensioni privilegiate di guerra.

[48] Cfr. *decreto luogotenenziale* 24 giugno del 1915, n. 903, contenente disposizioni relative al matrimonio dei militari durante la guerra, artt. 1-4. Si veda inoltre F. ROGGERO, *«Uno strumento molto delicato di difesa nazionale»*…, cit., p. 13.

Infine, secondo quanto stabilito dall'articolo 119 del *Testo Unico* del 1895, per riconoscere alla vedova il diritto all'assegno, il matrimonio con il militare deceduto avrebbe dovuto essere celebrato prima che questi riportasse le ferite o contraesse la malattia che poi ne avrebbero causato la morte. Anche tale norma subì tuttavia rilevanti modifiche nel tempo. La prima di esse, che si collegava logicamente alla nuova possibilità di contrarre matrimonio tramite procura, era portata dall'articolo 3 del decreto luogotenenziale del 12 novembre 1916, il quale stabilì che si sarebbe considerato valido (ai fini pensionistici) anche il matrimonio celebrato dopo l'insorgenza della malattia o delle ferite, purché la procura o la richiesta di pubblicazioni fosse stata presentata in una data antecedente a tali eventi[49].

La seconda modifica intervenne invece grazie alle prassi seguite dal *Comitato di liquidazione* che operava in seno al *Ministero per l'assistenza militare*. In sostanza, facendo leva sulle disposizioni che introducevano una presunzione della causa "di servizio" per determinate infermità, i funzionari del *Comitato* considerarono valido per ottenere la pensione privilegiata anche il matrimonio celebrato successivamente al momento in cui il militare era stato ferito, ma prima al peggioramento decisivo delle sue condizioni[50].

Come è stato fatto notare la legislazione di guerra e, in particolare, il decreto luogotenenziale 27 ottobre 1918, n. 1726, «creò la figura dell'assimilata a vedova, riconoscendole il diritto alla pensioni di guerra»[51], contraddicendo e derogando al diritto civile per ragioni sociali e umanitarie.

4. Conclusioni: le vedove del sacrificio

La figura della vedova rimase quindi al centro del dibattito pubblico (e giuridico) per l'intera durata del conflitto e anche successivamente, costituendo terreno fertile per la retorica del futuro regime, abile nel cavalcare opportunisticamente il loro malcontento con iniziative commemorative e propagandistiche[52].

Se l'idea posta alla base della configurazione della categoria dell'assimilata a vedova era quella di allargare la platea dei beneficiari della pubblica assistenza, riconoscendo una forma di tutela economica e morale anche quelle donne che avevano intrattenuto con il militare un legame stabile e duraturo, ma che - per diverse ragioni - non avevano potuto contrarre matrimonio, dopo la fine del conflitto il paradigma cominciò a cambiare:

[49] *Decreto luogotenenziale 12 novembre 1916, n. 1598…, cit.*, art. 3 co. 2: «deve «ritenersi tempestivo il matrimonio contratto posteriormente alla data delle ferite o malattie ivi contemplate, quando sia anteriore la data del mandato di procura o della richiesta delle pubblicazioni in seguito alle quali fu celebrato».

[50] Cfr. *L'assistenza di guerra in Italia: assistenza militare, pensioni di guerra…*, cit., p. 727-728.

[51] G. FRANCISCI, *La legislazione di guerra e i diritti della popolazione*, in M. MERIGGI (a cura di), *Parlamenti di guerra (1914-1915)…*, cit., p. 194.

[52] G. PERUGI, *I mutilati*, in A. COCO, F. CUTOLO (a cura di), *Le cicatrici della vittoria. Frammenti di storia del primo dopoguerra italiano*, ISRPt, Pistoia, 2019, p. 168.

L'assistenza a favore delle vedove […] dei militari morti per la guerra deve, per indeclinabili ragioni di giustizia e per le esigenze della Nazione, trasformarsi ed evolversi in modo, che con una più ampia protezione esplicata a favore di essi si possa promuoverne il risveglio delle energie produttive[53]

E ancora:

Nel caso della vedova […] Con la morte del marito, del figlio, del congiunto, essi hanno perduto bensì un valido aiuto; ma resta ancora in essi quel tanto di forza di lavoro e di operosità, da poter ancora bastare in gran parte a sé stessi, senza bisogno di una vera tutela e di un'assoluta completa protezione. E sarebbe strano invero che, proprio in questo momento in cui si è proclamata la personalità giuridica della donna, togliendola alla tutela maritale, si riconoscesse nello Stato l'obbligo di guidare, tutelare, dirigere la donna rimasta priva dell'uomo - sia esso marito, figlio o collaterale - nella stessa forma che si è riconosciuto doveroso adottare per il fanciullo ignaro impotente […][54].

Come si evince da questo scritto, tratto da una pubblicazione del 1919 edita dallo stesso *Ministero per l'assistenza militare*, le attenzioni governative (e la conseguente allocazione delle risorse) erano oramai focalizzate sulla ripartenza economica del Paese e sugli scenari post-bellici.

A ben vedere anche quando la guerra era ancora in corso la percezione delle pensioni vedovili avevano sollevato diverse discussioni, che si confondevano e legavano a problemi che affliggevano l'ordinamento del regno fin dalla sua nascita.

Una di esse riguardava un fenomeno in apparenza fisiologico, ovvero la scelta da parte delle donne che aveva perso il coniuge in guerra di ricrearsi una famiglia unendosi nuovamente in matrimonio. La questione che sollevò il disappunto di alcuni giuristi stava nella circostanza che - in molti casi - le nozze venivano celebrate solo secondo il rito religioso, in modo da continuare a percepire la pensione privilegiata di guerra.

A riguardo, così si esprimeva ad esempio nel 1916 Alfredo Ascoli sulla *Rivista di diritto civile*:

Muoiono ogni giorno per la grandezza d'Italia giovani soldati, che lasciano giovani spose, e a queste lasciano una pensione, che non è più così meschina come le pensioni dei vecchi funzionari civili, perché è la pensione privilegiata di guerra salente fino ai 3/5 dello stipendio; ma con la pensione nasce per esse il debito verso lo Stato di non rimaritarsi. Ora, quando le lagrime di tante giovani vedove saranno asciugate, ve ne sarà pur un buon numero desiderose di formarsi una nuova famiglia: ma poiché per ciò fare dovrebbero perdere la non del tutto meschina pensione, ecco nuovamente un incentivo al comodo antico spediente del matrimonio religioso. E ancora una volta i matrimoni religiosi scompagnati dal civile aumenteranno e torneranno certamente in pochi anni a numeri elevati, perché la massa di queste pensionate, di età giovanile o di condizione non agiata, non vorrà rinunziare né alle gioie di una nuova famiglia, né al sicuro sussidio della pensione di Stato[55].

[53] *L'assistenza di guerra in Italia: assistenza militare, pensioni di guerra*…, cit., p. 281.
[54] *Ibid.*, p. 282.
[55] A. ASCOLI, *Questioni relative alla guerra*, in *Rivista di diritto civile*, n. 3 (maggio-giugno), 1916, pp. 374-375.

Deplorando questa pratica, l'insigne giurista livornese auspicava un intervento del legislatore, volto ad rendere obbligatoria «la precedenza del matrimonio civile sul religioso»[56]. Questa proposta non costituiva di per sé una novità, in quanto per tutta la seconda parte del XIX secolo molti giuristi avevano sostenuto questa necessità.

Nonostante il codice civile del 1865 avesse configurato il matrimonio quale istituto di diritto privato[57], imponendo che la sua celebrazione dovesse sempre seguire quella religiosa, rimaneva comunque una sproporzione notevole tra il numero di questi ultimi e di quelli celebrati secondo le forme e il rito del diritto canonico[58]. Infatti, nell'idea di larga fascia della popolazione, l'essenza dell'unione coniugale restava strettamente legata al sacramento «[…] e il matrimonio civile fu ritenuto una ripetizione oziosa del rito religioso, una formalità secondaria, una inutilità, e quindi omesso o assai tardivamente e negligentemente celebrato»[59].

In questo modo, il tema delle pensioni di guerra e della loro sostenibilità finanziaria si intrecciava con la *vexata quaestio* (ancora irrisolta dopo il 20 settembre 1870 e la breccia di Porta Pia) dei rapporti tra lo Stato e la Chiesa e tra la giurisdizione laica e quella ecclesiastica.

Sarebbe inoltre un errore ritenere che la situazione creatasi intorno alle vedove fosse in qualche modo desiderabile per la Chiesa romana. Lo spiegò bene il cardinale Pietro Maffi[60], in quel momento arcivescovo di Pisa, in una lettera indirizzata al senatore e scrittore veneziano Pompeo Gherardo Molmenti. A giudizio del presule, tale situazione costringeva il clero ad un conflitto di coscienza evidente: o rispettare la legge (imponendo alla sposa che il matrimonio celebrato in chiesa fosse poi seguito da uno in municipio) ma condannando in molti casi le nuove famiglie ad uno stato di grave indigenza a seguito della perdita della pensione e favorendo - di fatto - la creazione di convivenze *more uxorio*, o violarla apertamente, assecondando le volontà delle vedove[61]. Pertanto, al fine di scongiurare concubinati e, nel contempo, assicurare un dignitoso sostentamento, l'arcivescovo Maffi suggeriva di stabilire che l'assegno sarebbe continuato anche in seguito ad un nuovo coniugio.

Al cardinale rispondeva qualche mese dopo, sempre dalle pagine della *Rivista di diritto civile,* ancora Ascoli:

Certo, il rimedio proposto dal Cardinale Maffi avrebbe la massima efficacia; ma, sia detto con tutta la reverenza dovuta all'eminentissimo porporato, esso equivale all'abolizione di un dazio per evitare il contrabbando. Tutto sta a vedere se lo

56 A. ASCOLI, *Questioni*, *op. cit.*, p. 375.

57 Sul punto si veda la ricostruzione di F. SCIARRA, *Il matrimonio nell'Ottocento italiano fra potere civile e potere ecclesiastico*, in *Historia et ius*, n. 9, 2016, paper 21, pp. 6-14.

58 Cfr. G. SIGHELE, *Della necessità di ordinare la precedenza del matrimonio civile al religioso e di statuire una sanzione penale al ministro del culto che contravvenisse*, Fratelli Richiedei, Milano, 1873, p. 3.

59 G. SIGHELE, *Della necessità di ordinare la precedenza del matrimonio civile*, *op. cit.*, pp. 19-20.

60 Sulla figura di Maffi, emblema di un cattolicesimo intento a cercare - tra fine Ottocento e inizio Novecento - un punto di equilibrio tra impegno sociale e istanze nazionalistiche, si veda F. SANI, voce *Maffi, Pietro*, in DBI, 67, 2006, *ad vocem*.

61 Cfr. F. MEDA, *Le pensioni di guerra e il matrimonio religioso*, in *Vita e Pensiero*, n. V, 2017, fasc. 36, pp. 114-115.

Stato può rinunciare al dazio. Il nostro rimedio sarà un po' meno efficace, perché esso lascerà sempre luogo al concubinato. Ma del semplice concubinato non è molto a temere. Nel nostro popolo è ancora troppo vivo il sentimento religioso perché si possa temere un gran numero di concubinati stabiliti per conservare la pensione: il pericolo solo e vero sta nel matrimonio religioso. È urgente dunque provvedere in questo senso[62].

Ascoli riconosceva la bontà della proposta di Maffei e il suo carattere «doppiamente patriottico»[63], ma dubitava sulla tenuta delle casse dello Stato e insisteva nel contempo sulla necessità di evitare che le vedove (con la complicità dei loro parroci) continuassero a compiere delle vere e proprie frodi alla legge per continuare a percepire le pensioni.

Considerata anche la portata numerica del problema, il dibattito si accrebbe di altre autorevoli voci. Arangio Ruiz[64] ad esempio, che in quel momento prestava servizio presso l'Università di Modena, non ritenendo possibile l'emanazione di una legge che sancisse la precedenza del matrimonio civile su quello religioso in un paese come l'Italia (che presentava un elettorato profondamente cattolico) propose di considerare compiute in frode alla legge quelle unioni ecclesiastiche che non fossero poi seguite entro un mese da quelle laiche[65].

Più aperta era invece la posizione di Leonardo Coviello, il quale - a differenza di Ascoli - riteneva ingiusta la perdita del diritto alla pensione che veniva imposta alla vedova di un servitore dello Stato (deceduto in combattimento dopo anni di servizio e di contributi versati) in caso di nuove nozze. Ciò valeva se la vedova si fosse risposata in municipio ma, a maggior ragione (motivava Coviello) anche se avesse contratto "solo" un nuovo matrimonio religioso. In quest'ultimo caso, infatti, quel vincolo, non riconosciuto dallo Stato, non avrebbe garantito alla donna nemmeno il diritto agli alimenti da parte del nuovo marito, che restava, giuridicamente, un semplice concubino; conseguentemente, il rischio di cadere in stato di povertà con la revoca della pensione era ancora più forte[66].

Alla luce di tutto quanto sopra esposto, si può affermare che nel corso del primo conflitto mondiale le vedove di guerra vissero una condizione complessa e spesso contraddittoria.

Nonostante l'enfasi ufficiale sul dovere morale dello Stato verso i suoi cittadini in armi, l'assistenza che ricevettero fu fortemente segnata da controlli morali e discriminazioni. Esse furono al centro di una narrazione pubblica che le voleva fedeli al ricordo del marito caduto, madri esemplari e custodi della patria e se da un lato furono oggetto di riconoscimento pubblico, nel contempo dovettero sottostare a vincoli economici e giuridici che ne limitarono profondamente le scelte di vita, e le fece loro malgrado assurgere a emblemi viventi del sacrificio di un intero Paese.

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62 A. ASCOLI, *Questioni relative alla guerra*, in *Rivista di diritto civile*, n. 5 (settembre-ottobre), 1916, p. 653.
63 A. ASCOLI, *Questioni*, *op. cit.*, pp. 651-652.
64 Sulla figura di Gaetano Arangio-Ruiz si veda E. PELLERITI, voce *Arangio-Ruiz, Gaetano*, in *DBGI*, I, pp. 90-91.
65 F. MEDA, *Le pensioni di guerra e il matrimonio religioso*…, *cit.*, p. 116.
66 F. MEDA, *Le pensioni di guerra e il matrimonio religioso*, *op. cit.*, p. 117.

L'assistenza e il sostegno alle donne nell'Italia tra le due guerre: evoluzione delle politiche e approdo all'impegno di Nadia Gallico Spano e Nilde Iotti *

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Abstract [It]: Il contributo analizza, in una prospettiva storico-giuridica, l'evoluzione delle politiche di assistenza e tutela delle donne tra le due guerre mondiali, con particolare attenzione alla condizione delle vedove di guerra. Attraverso l'esame delle trasformazioni normative, dal sistema monarchico e fascista alla Costituzione repubblicana, si evidenzia il passaggio da un modello assistenziale e patriarcale a uno fondato sul riconoscimento dei diritti sociali. Le figure di Nadia Gallico Spano e Nilde Iotti emergono come protagoniste del processo di ridefinizione del ruolo femminile nella società italiana del dopoguerra.

Title: Assistance and Support for Women in Italy Between the Two World Wars: The Commitment of Nadia Gallico Spano and Nilde Iotti
Abstract [En]: This paper examines, from a historical-legal perspective, the evolution of welfare and protection policies for women between the two World Wars, with a specific focus on war widows. By tracing the shift from the monarchic and fascist systems to the Republican Constitution, it highlights the transition from a paternalistic welfare model to one grounded in social rights. Nadia Gallico Spano and Nilde Iotti stand out as key figures in redefining women's legal and social status in post-war Italy.

Parole chiave: vedove di guerra; assistenza sociale; cittadinanza femminile; Costituzione repubblicana
Keywords: war widows; social welfare; women's citizenship; republican constitution

Sommario: **1**. L'assistenza alle donne da inizio secolo al primo conflitto mondiale **2**. Il secondo dopo guerra: i contributi di Nadia Gallico Spano e Nilde Iotti

1. L'assistenza alle donne da inizio secolo al primo conflitto mondiale

I conflitti determinano un cambiamento, una ridefinizione, del rapporto con lo Stato per ogni cittadino: per le donne, nella qualità di figlie, madri, mogli, i due conflitti mondiali hanno determinato un inevitabile cambiamento del rapporto donna-istituzioni. Proprio la perdita del figlio o del marito – o la loro temporanea assenza – sono alla base di un cambiamento della struttura del nucleo familiare e della posizione femminile al suo interno causando anche una reazione politica[1]. Il presente contributo si

* Articolo sottoposto a referaggio.
[1] Come si ricorda in F. LAGORIO, *Appunti per una storia sulle vedove di guerra italiane nei conflitti mondiali,* «Rivista di storia contemporanea», nn. 1-2, 1994-1195, p. 172, dove si ricordava come fin dal 1915 proliferassero movimenti femminili contro la guerra in tutta la penisola italiana, le cui proteste erano state registrate dalla polizia che tendeva ad attribuire tale malcontento allo sconvolgimento sociale ed economico della famiglia prodotto dall'allontanamento di uno dei suoi

propone di esaminare tale evoluzione in una prospettiva storico-giuridica, attraverso una breve ricostruzione delle origini del sistema previdenziale e assistenziale per le vedove di guerra, il suo progressivo cambiamento come utile cartina di tornasole per una riflessione sulla trasformazione del rapporto tra Stato, famiglia e cittadinanza femminile fino al secondo dopoguerra.

L'approccio di inizio secolo all'assistenza, anche in periodo di guerra, contemplava un campo d'azione molto limitato per l'intervento dello Stato: nella relazione di Giolitti relativa alla legge sulla beneficenza del 18 luglio 1904, n. 390, si leggeva che «in prima linea l'assistenza pubblica è un obbligo naturale della Società, che deve provvedervi con tutti i mezzi, di cui dispone. In seconda linea soltanto viene l'azione dello Stato, il quale deve provvedere a colmare le deficienze dell'assistenza sociale»[2]. La pensione di guerra, come figura a sé stante e distinta da quella della pensione privilegiata ordinaria, trovò il suo primo riconoscimento ufficiale nella legge 3 giugno 1912, n. 667, emanata in occasione del conflitto italo-turco, «legge composta di soli cinque articoli e che, rivolta al passato più che all'avvenire, ebbe tutt'altro scopo che quello di regolare la materia in modo organico e completo»[3]. Anteriormente alla legge n. 667 del 1912, esistevano soltanto pensioni privilegiate di servizio che erano regolate dalla legge 21 febbraio 1895, n. 70[4]. Ciononostante, durante il primo conflitto mondiale – in armonia con l'approccio sopra menzionato – il primo impulso all'assistenza militare venne dato dall'opera dei privati e, solo in un secondo tempo, lo Stato cominciò ad intervenire senza l'ausilio di intermediari privati sino ad affermare la necessità di un suo intervento diretto[5].

Nel capitolo relativo all'assistenza di guerra della *III Conferenza interalleata per la protezione degli invalidi di guerra* l'assistenza sembrava inizialmente escludere le donne poiché si osservava che «da guerra crea tra la Società e gli assistendi un nesso causale ben diverso da quello su cui si fonda l'assistenza pubblica, principalmente perché il servizio militare non è imposto a tutti i consociati, ma soltanto ad una parte di essi»[6]: solo col tempo, come si osservava nella relazione, «al rapporto giuridico del servizio militare prestato si sostituisce apparentemente quello del danno subito per fatto di guerra»[7]. Tale cambiamento è stato fondamentale per far sì che fossero incluse anche le donne nel novero di coloro che avevano diritto

membri che di norma svolgeva l'attività lavorativa necessaria per il sostentamento, Archivio centrale dello Stato, Direzione Generale di pubblica sicurezza, I Guerra Mondiale, 1915-1918.

[2] Ministero per l'assistenza militare e le pensioni di guerra, *L'assistenza di guerra in Italia, assistenza militare - pensioni di guerra, III Conferenza interalleata per la protezione degli invalidi di guerra*, Roma, Società anonima poligrafica italiana, 1919, p. 88.

[3] *La giurisdizione sulle pensioni di guerra*, Documento interno, I legislatura, p. 86, digitalizzato al seguente indirizzo https://legislature.camera.it/_dati/leg01/lavori/stampati/pdf/010_001004_F002.pdf.

[4] *Relazioni della 5a Commissione permanente (finanze e tesoro), comunicate alla Presidenza il 18 maggio 1950 sul Disegno di Legge presentato dal Ministro del Tesoro e del Bilancio, comunicato alla Presidenza il 17 dicembre 1949 in merito al Riordinamento delle disposizioni sulle pensioni di guerra*, Senato della Repubblica, Disegni di legge e relazioni - 1948-50, p. 1.

[5] Ministero per l'assistenza militare e le pensioni di guerra, *L'assistenza di guerra in Italia,* cit., p. 88.

[6] *Ibidem.*

[7] Ivi, p. 89.

ad un ristoro per i danni subiti durante la guerra, *in primis* la vedovanza che le privava del sostegno morale ed economico del coniuge per il sostentamento della famiglia.

Allo scoppio della Prima guerra mondiale, la legislazione del 1912 si dimostrò rapidamente inadeguata alle nuove esigenze che si andavano man mano manifestando: si susseguì così una lunga serie di provvedimenti legislativi adottati a brevi distanze di tempo, dapprima in modo frammentario e tumultuoso, «poi, con l'avvento della pace, in modo più ordinato e sistematico, fino a sboccare in quella riforma tecnico-giuridica che, lungamente ponderata e studiata, ebbe finalmente ad attuarsi con il regio decreto 12 luglio 1923, n. 1491». In base a tale regio decreto, i vari gruppi di chiamati potevano reclamare il diritto alla pensione di guerra nell'ordine seguente: 1) vedove ed orfani; 2) in loro mancanza: genitori; 30) in mancanza dei genitori: fratelli e sorelle nubili del militare. Nel caso, molto frequente, di convivenza della vedova con gli orfani, la pensione era concessa cumulativamente all'una e agli altri con opportune integrazioni, mentre veniva ripartita nel caso di non convivenza e attribuita interamente agli orfani nel caso in cui la madre fosse deceduta o non potesse fruire della pensione, salvo in ogni caso il reciproco diritto di accrescimento.

Fin dal 1915, alla vigilia della dichiarazione di guerra all'Austria, lo Stato, preoccupato della condizione di migliaia di famiglie, «le quali, private per la mobilitazione generale dell'Esercito, dell'aiuto dei capi, sarebbero rimaste prive dei necessari mezzi di sussistenza, con decreto-legge del 31 maggio 1915, n. 620, concesse un soccorso giornaliero»: primi destinatari di questo aiuto erano la moglie e i figli legittimi dei militari di età inferiore ai dodici anni. Non solo, il Ministero pensò anche alle condizioni dei genitori dei militari ammogliati, concedendo loro un sussidio mensile di Lire 15, ed in alcuni casi dei sussidi straordinari, «allo scopo di sempre più contribuire a dare ai militari combattenti quell'elemento di tranquillità sulla sorte dei propri congiunti che loro deriva certamente dalla sicurezza che il proprio allontanamento dalla famiglia non costituisce per i rimasti la miseria e gli stenti»[8].

Con riguardo al ruolo delle donne, il Ministero ricordava come, già durante il conflitto lo Stato fosse intervenuto anche per aiutare il collocamento delle vedove di guerra in impieghi, dando ad esse la preferenza a parità di titoli, cercando così di rendere «economicamente meno sensibile il danno causato dalla morte del militare»[9]. Nonostante questo approccio durante la guerra, al suo termine si leggeva come fosse necessaria, ad avviso del Ministero, un trattamento differenziato per gli orfani e le vedove poiché quest'ultime «con la morte del marito, del figlio, del congiunto, […] han perduto bensì un valido aiuto; ma resta ancora in essi quel tanto di forza di lavoro e di operosità, da poter ancora bastare in gran parte a sé stess[e], senza bisogno di una vera tutela e di un'assoluta completa protezione»[10]

[8] Ivi, p. 125.
[9] Ivi, p. 278.
[10] Ivi, p. 282.

Tale impostazione paradossale si rifletteva anche nelle parole per cui, «sarebbe strano invero che, proprio in questo momento in cui si è proclamata la personalità giuridica della donna, togliendola alla tutela maritale, in cui le si è concesso il voto politico, si riconoscesse nello Stato l'obbligo di guidare, tutelare, dirigere la donna rimasta priva dell'uomo sia esso marito, figlio o collaterale». Al 1919 risale, infatti, la legge n. 1176 che abolì la potestà maritale e permise alle donne l'accesso alle professioni, pur con alcune significative limitazioni[11]. In base al ragionamento sotteso alla relazione ministeriale pareva che, proprio il fatto di aver finalmente conseguito l'emancipazione dalla tutela del marito e l'accesso alle professioni, facesse venire meno il dovere dello Stato alla tutela delle vedove, ormai in grado – secondo l'autore – di fare fronte al venir meno dell'appoggio materiale costituito dal lavoro del marito defunto. Certamente, una delle ragioni principali della proposta del ministro Sacchi e dell'accoglimento della stessa da parte della camera fu quello che veniva qualificato come "senso di riconoscenza" verso le donne per quello che avevano fatto e avrebbero fatto durante la guerra[12]. Alla base di tale provvedimento sicuramente concorrevano anche ragioni politiche: era, infatti, necessario dare un segnale alle donne che erano diventate ormai lavoratrici indispensabili, anche per l'industria bellica. Come sottolinea Francesco Mastroberti, era necessario «dare loro un segno da parte del governo, così come bisognava dare un segno alle italiane ancora sotto l'Impero austro-ungarico che godevano di un diverso e migliore regime giuridico regolato dall'ABGB del 1811»[13]. La legge n. 1176 era il risultato di un lungo processo: il 7 marzo del 1919 era iniziata la discussione alla Camera sul progetto della Commissione Parlamentare che aveva ampliato la proposta del Ministro Sacchi prevedendo anche l'abolizione dell'articolo 10 del Codice di procedura civile, ammettendo altresì le donne ad esercitare tutte le professioni, ed a ricoprire pubblici impieghi, eccettuati quelli che implicavano poteri giurisdizionali, o l'esercizio di diritti e potestà politiche, o che attenessero alla difesa militare dello Stato[14]. Tale legge, rappresentò un importante cambiamento per la posizione delle donne in Italia, permettendo loro – tra le altre cose – di accedere anche alla professione forense. Questo nuovo indirizzo politico e legislativo affondava le sue radici, come sopra accennato,

[11] L'articolo 7 della legge emancipatrice segnava limiti ben precisi all'accesso delle donne alle professioni: «Le donne sono ammesse, a pari titolo degli uomini, ad esercitare tutte le professioni ed a coprire tutti gli impieghi pubblici, esclusi soltanto, se non vi siano ammesse espressamente dalle leggi, quelli che implicano poteri pubblici giurisdizionali o l'esercizio di diritti e di potestà politiche, o che attengono alla difesa militare dello Stato secondo la specificazione che sarà fatta con apposito regolamento».

[12] F. MASTROBERTI, *La "Legge Sacchi" sulla condizione giuridica della donna: grande riforma o «modestissima leggina»?*, in *Il Mediterraneo e la Grande Guerra. Diritto, politica, istituzioni*, a cura di S. Vinci e F. Mastroberti, Quaderni del Dipartimento Jonico, 4/2016, p. 50

[13] *Ibidem*, dove si ricorda come il Codice civile Austriaco del 1811 (ABGB) ponesse il governo della famiglia nelle mani del padre-marito ma la moglie avesse una condizione migliore rispetto a quella prevista nel codice napoleonico. La moglie poteva amministrare da sola il suo patrimonio, senza bisogno di autorizzazione maritale e poteva da sola fare contratti e stare in giudizio

[14] Ivi, p. 51.

proprio nel terreno del primo conflitto mondiale. Erano state, infatti, le condizioni determinate da tale guerra a fare sì che Stefania Türr potesse affermare, nel 1918

Oggi il bilancio morale e materiale degli anni di guerra è tutto a favore di noi donne e possiamo perciò presentarci a fronte alta dinanzi agli uomini e domandar loro: e ora? Nei giorni di lavoro febbrile, nei giorni della trepidazione e del dolore voi ci avete chiamate, noi siamo accorse e vi abbiamo dato l'aiuto necessario e proficuo, oggi che la nostra opera è compiuta, attendiamo il nostro premio. Noi non possiamo più essere assenti dalla vita politica delle Nazioni e voi dovete provvedere[15].

Come autorevolmente sostenuto si può così definire come la «sola grande legge riformatrice dell'età liberale»[16], quasi a ricompensa del ruolo svolto dalle donne durante la guerra: gli uomini al fronte, le donne a provvedere alla crescita economica e alla tutela familiare[17]. Infatti, per le donne italiane, il periodo della Prima guerra mondiale fu sicuramente caratterizzato da quella che si può definire come un'esperienza paradossale: da un lato, la Prima Guerra Mondiale fu uno dei conflitti più devastanti e traumatizzanti nella storia d'Italia, dall'altro, comportò il crearsi di opportunità e permise alle donne di conquistare nuovi spazi di partecipazione alla vita pubblica e di valorizzare il loro ruolo di cittadine. Mentre la guerra costringeva lo Stato ad attivare nuovi canali di assistenza sociale, soprattutto dopo la sconfitta di Caporetto, la insufficienza e scarsa incisività dei provvedimenti veniva drammaticamente amplificata. Per queste ragioni, sarà l'intervento di forze estranee alla gestione statale a supplire alle sue carenze ed alle assenze, in particolar modo le forze socialiste e cattoliche. Col tempo, viene così cambiando l'approccio all'assistenza: ad esempio la pensione di reversibilità viene concessa alle vedove indipendentemente dalle condizioni economiche in base alla «presunzione assoluta, conforme alla realtà dei rapporti sociali, che il marito e il padre siano il necessario supporto della famiglia»[18]. In questo modo «al tradizionale carattere di ricompensa nazionale, di attestato di gratitudine della patria […], il riconoscimento del carattere delle pensioni di reversibilità come parziale indennizzo del danno subito»[19]

Con particolare riguardo alle condizioni giuridiche applicate alle donne, già prima della guerra erano state presentate due proposte di legge che miravano all'abolizione della potestà maritale, una a firma

[15] S. TÜRR, *Interessi femminili,* in «La Madre Italiana. Rivista mensile pro-orfani di guerra», III, 10, pp. 427-428
[16] P. UNGARI, *Storia del diritto di famiglia in Italia. 1796-1974*, Bologna, il Mulino, 2002, p. 183.
[17] L. GARLATI, *Quando le donne scrissero la costituzione. Il secondo comma dell'art. 29 tra principio di uguaglianza e indissolubilità del matrimonio*, in «Italian Review of legal History», 10/1 (2024), n. 10, p.
[18] Relazione De' Stefani, ministro delle finanze e del tesoro, Bollettino dei servizi per l'assistenza militare e le pensioni di guerra, Roma 1923.
[19] F. LAGORIO, cit., pp. 175-176.

dell'onorevole Carlo Gallini discussa alla Camera il 19 febbraio 1910 e l'altra a firma del senatore Scialoja[20] ,discussa in Senato nella tornata del 20 dicembre 1912, le quali non furono però approvate[21].

Dopo l'inizio della guerra, nel 1916, il deputato Amedeo Sandrini presentò alla Camera, nella tornata del 12 dicembre, una nuova proposta di legge di iniziativa parlamentare «sull'abolizione dell'autorizzazione maritale». Presentando il disegno di legge, Sandrini lodava la «virtù della donna nostra» evidente non solo «negli ospedali e nelle multiformi manifestazioni dell'organizzazione civile», dove prestava aiuto e conforto, nonché «negli stabilimenti e nelle officine» dove come operaia aveva portato e portava un grande contributo allo sforzo bellico della nazione, ma soprattutto nelle «famiglie, negli uffici e nelle aziende» dove aveva «sostituito i mariti e i congiunti chiamati alle armi, dando prova di una sicura capacità fattiva e direttiva, che è in stridente antitesi con quella *deminutio capitis*, che nel consorzio famigliare e sociale le è imposta dall'articolo 134 del codice civile»[22]

Il deputato Sandrini ricordava inoltre come

Sicché io ritengo, onorevoli colleghi, che accordando finalmente alla donna italiana la completa eguaglianza giuridica, oltre che realizzare una matura riforma legislativa, oltre che adempiere ad un obbligo di giustizia verso una parte sì numerosa ed importante di cittadini dello Stato, compiremo un doveroso atto di gratitudine per quanto la donna italiana ha fatto e fa in questi terribili momenti.

Il tema della guerra emergeva ancora una volta nelle parole del deputato quando ricordava come nel disegno di legge sugli orfani della guerra, la cui discussione era imminente, venisse proposta l'abolizione di quelle «ingiuriose antiche esclusioni delle donne dagli uffici tutelari: questo rappresenta un passo importante sulla via delle rivendicazioni femminili»[23]. In quella sede, il Ministro di Grazia e Giustizia Sacchi affermava come il suo «sentimento personale [fosse]di piena adesione a questa tendenza verso la eguaglianza giuridica tra l'uomo e la donna tanto più oggi che la guerra ha messo in evidenza di quanto son capaci le nostre donne»[24]. l progetto di legge sulla condizione giuridica della donna del Sandrini non ebbe, però, seguito perché il Ministro Sacchi presentò una proposta ministeriale più ampia che prevedeva,

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[20] Il testo digitalizzato della proposta di legge è consultabile al seguente indirizzo https://www.senato.it/application/xmanager/projects/leg18/file/1912_Ddl%20942%20(Relazione%20proponente).pdf.
Il giurista napoletano Scialoja affermava in tale proposta come, a suo avviso, rispondesse «ormai alla comune coscienza l'abolizione di un vincolo che pone la donna maritata in condizione d'inferiorità rispetto al suo patrimonio e che non trova una vera giustificazione nella pretesa unità d'indirizzo dell'economia della famiglia», Legislatura XXIII, I sessione 1909-912, Documenti, Disegni di legge e relazioni, p. 2.

[21] Come si ricordava in E. GUIDA, *La capacità giuridica della donna: dopo la legge 17 luglio 1919 n. 1176*, in «Rivista Internazionale di Scienze Sociali e Discipline Ausiliarie», 1920, vol. 86, fasc. 333/334, p. 11, dove si leggeva che «parecchi progetti d'iniziativa parlamentare, presentati su questo proposito alle due camere, erano, appunto per codesto contrasto di intenti, andati tutti a finire negli archivi»

[22] Atti Parlamentari – Legislatura XXIV, 1° sessione – Discussioni – Tornata del 12 dicembre 1916, 11573, come ricordati anche da F. MASTROBERTI, cit., p. 49.

[23] Atti parlamentari, Legislatura XXIV - la sessione - Discussioni - Tornata del 12 dicembre 1916, p. 11574

[24] *Ibidem.*

come sopra accennato, la possibilità per le donne di esercitare le funzioni tutelari. Solo con la fine della guerra si arrivò infine all'approvazione della legge n. 1176 sopra citata. Durante la discussione di tale progetto di legge, il deputato Abozzi aveva affermato che avrebbero dovuto essere «abbandonate le sterili discussioni sulle attitudini intellettuali della donna, sulla sua resistenza organica, sulla differenza psicologica tra i due sessi» che avevano contraddistinto il dibattito sulla capacità giuridica della donna e sul suo accesso alle professioni sino a quel momento. Egli sottolineava come

la guerra, or non è molto finita con la vittoria delle nostre gloriose armi, ha dimostrato che la donna italiana ha saputo acquistare altissima coscienza di sé stessa anche fuori della famiglia. Essa ha dato prova di fulgido eroismo nelle diverse opere di assistenza civile, ha inteso gli aspri doveri dell'ora tremenda e li ha saputi nobilmente compiere. La Rappresentanza nazionale quindi sarà orgogliosa di dimostrare riconoscenza verso chi per la gloria dell'Italia ha dato il suo cuore, il suo braccio, tutt o quanto di più caro poteva avere; ha sofferto inenarrabili dolori con la scomparsa degli affetti di madre, di figlia, di sposa, di sorella

Contro questo tipo di retorica si esprimeva il deputato Cotugno che affermava: «sarebbe d'altronde molto originale che io venissi qui a fare della cavalleria di maniera verso la donna; a ricantare in tono più o meno melodrammatico l e benemerenze della donna in guerra e in pace. Via, alziamo le dighe. Troppi fiumi di tronfia eloquenza devastarono le nostre orecchie!»[25] . Lo stesso deputato Cotugno, con parole che sembravano anticipare di molto il momento in cui tali temi entrarono effettivamente nella discussione politica e legislativa, affermava come egli individuasse nella legge n. 1176 l'inizio di «più decisi passi verso la tanto invocata radicale riforma del diritto di famiglia […] Io formulo il voto e l'augurio che la reclamata ricerca della paternità non resti ancora per molti altri- secoli una vana aspirazione; che il divorzio, di cui non osano parlare i deputati alla vigilia delle elezioni, (*rumori*) possa -essere alla fine discusso; che, senza ipocrisia, si riconosca alla donna il diritto allo elettorato, agl'impieghi, all'esercizio di tutte le professioni, quella di avvocato compresa»[26]

Proprio in vista della necessaria ricostruzione post-bellica egli concludeva con le seguenti parole, soffermandosi sul ruolo fondamentale che le donne avrebbero svolto

Ogni speculazione convien che sia qui morta. Prendo atto che questa leggina [la sopra menzionata legge 1176 del 1919] ci mette in uguaglianza giuridica coi fratelli liberati (i quali godono anche del divorzio) e che non è lontano il tempo in cui le donne potranno entrare (lasciamo i sentimentalismi e gli sdilinquimenti) come cooperatrici in questa gigantesca opera di ricostituzione in cui non sarà mai soverchio il loro fervido aiuto.

[25] Atti Parlamentari, Legislatura XXIV – 1° sessione – Discussioni – 1° tornata del 7 marzo 1919, p. 18676.
[26] Ivi, p. 18677.

2. Il secondo dopo guerra: i contributi di Nadia Gallico Spano e Nilde Iotti

In armonia con quanto sopra affermato in sede di discussione parlamentare nel 1919, si può constatare come la figura della vedova di guerra abbia rappresentato una delle espressioni più significative delle trasformazioni giuridiche e sociali che accompagnarono sia il primo sia il secondo dopoguerra. In particolar modo al termine del secondo conflitto mondiale, l'Europa si trovò a fare i conti non soltanto con la distruzione materiale e morale lasciata dalla guerra, ma anche con la necessità di dare riconoscimento e tutela a milioni di donne rimaste sole, spesso prive di mezzi di sussistenza e di un ruolo definito nel nuovo ordine civile.

In questo contesto, gli ordinamenti nazionali furono chiamati a elaborare un complesso sistema di norme volto a riconoscere alle vedove di guerra uno status giuridico specifico, traducendo in termini legali il sacrificio dei caduti e la funzione morale attribuita alle loro famiglie. L'introduzione di pensioni, assegni di reversibilità e benefici assistenziali non rispondeva soltanto a un'esigenza di giustizia sociale, ma rifletteva anche la volontà di integrare il lutto privato in una narrazione pubblica di ricostruzione e patriottismo. Le politiche adottate nei diversi Paesi — e, nel caso italiano, l'evoluzione dalla legislazione fascista alla normativa repubblicana — mostrano come la condizione della vedova di guerra sia stata al tempo stesso un terreno di continuità e di rottura: continuità, nella persistenza di modelli familiari tradizionali che definivano la donna in funzione del marito caduto; rottura, nella progressiva apertura verso forme di cittadinanza femminile autonome, legate alla partecipazione sociale e lavorativa.

L'analisi storico-giuridica di questa figura consente dunque di comprendere come il diritto abbia contribuito, nel dopoguerra, alla ridefinizione dei rapporti di genere e alla costruzione di una nuova idea di cittadinanza, fondata sull'intreccio tra memoria, riconoscimento e solidarietà nazionale.

Sul piano normativo, l'Italia ereditava dal periodo monarchico e fascista un complesso sistema di provvidenze, disciplinato principalmente dal sopra menzionato Testo unico delle pensioni di guerra del 1923 e successivamente integrato dalla legislazione corporativa e assistenziale degli anni Trenta. Queste norme, pur prevedendo tutele economiche e simboliche per le vedove dei caduti, erano ispirate a una visione fortemente patriarcale, che concepiva la donna come depositaria del sacrificio maschile e custode della memoria familiare, ma priva di piena autonomia giuridica e professionale. La sistemazione delle scomposte legislazioni emanate negli anni di guerra non venne condotta a termine dallo Stato liberale ma solo nel 1923, durante il regime fascista, con l'approvazione di un testo unico che era già stato auspicato nel dopoguerra[27]

Una delle prime disposizioni volte a mitigare la disoccupazione e le precarie condizioni economiche della popolazione va ricordato il decreto legislativo luogotenenziale 4 agosto 1945, n. 453, fu stabilito che il 50

[27] F. LAGORIO, cit., p. 176.

per cento delle assunzioni da effettuarsi nei due anni successivi, da parte sia delle pubbliche Amministrazioni, sia delle imprese private, fosse riservata a favore dei mutilati, invalidi e combattenti della guerra 1940-43 e della guerra di liberazione, dei partigiani, dei militari e civili reduci dalla prigionia, dei deportati dal nemico e degli orfani e delle vedove dei caduti[28].

Alla fine della guerra, in seno all'Assemblea costituente, furono infine le stesse donne a potersi fare finalmente promotrici dei bisogni ingenerati dal conflitto per quella fascia particolarmente debole della popolazione rappresentata dalle vedove di guerra e le mogli dei prigionieri. Nella primavera del 1946 le donne non sono solo elettrici[29]; sono anche per la prima volta elette, all'esito di appassionate e intense campagne elettorali[30]. Nell'elezione per l'Assemblea costituente, su un totale di 556 deputati, vengono elette 21 donne: 9 della Democrazia cristiana, 9 del Partito comunista, 2 del Partito socialista e 1 dell'Uomo qualunque[31].

Sul ruolo che le donne avrebbero dovuto svolgere si soffermava in quei giorni Nilde Iotti[32]

Io penso al grave compito che spetta a noi donne elette alla Costituente; mi pare che dietro di noi risuoni la voce di tutte le madri e di tutti i bambini d'Italia; è una voce molto spesso dolorosa e accorata che ricorda case distrutte, deschi senza pane, miseria continua e terribile. Noi dovremo lottare perché le tante rivendicazioni delle donne d'Italia siano esaudite, sappiamo che il cammino è duro e difficile, ma ci sorregge la nostra fede e la nostra volontà[33]

Anche l'altra costituente Angela Maria Guidi Cingolani si soffermava sulle nuove dinamiche che avrebbero dovuto caratterizzare il periodo postbellico e sul ruolo che le donne vi avrebbero svolto, affermando che sarebbe stato necessario «valutarci come espressione rappresentativa di quella metà del

[28] Atti Parlamentari, legislatura II- Documenti - Disegni di legge e relazioni, Proroga del decreto legislativo luogotenenziale 4 agosto 1945, n. 453, concernente l'assunzione obbligatoria al lavoro dei reduci, orfani e vedove di guerra, nelle pubbliche Amministrazioni e nelle imprese private

[29] N. Iotti, in *Vie nuove*, 2 giugno 1947. Ricordando il primo voto delle donne di un anno prima Iotti scrive: «Erano un po' emozionate quel giorno: sentivano tutta l'importanza del loro atto e la responsabilità che da esso derivava. Sentivano la gioia di essere finalmente libere, come italiane e come donne, e quella scheda, su cui mani incerte o sicure tracciavano una croce, era per loro un simbolo di democrazia, di libertà, di aspirazioni finalmente realizzate». Degli oltre 14 milioni di donne che acquisirono il diritto di voto, andarono a votare una percentuale altissima: l'89% delle aventi diritto. In realtà il 2 giugno 1946 non fu la prima volta in assoluto in cui le donne votarono: in primavera avevano già votato per le elezioni amministrative.

[30] C. TRIPODINA, *Nilde Iotti, donna della costituente. Un'introduzione a Leonilde Iotti, relazione sulla famiglia*, in «Costituzionalismo.it», fascicolo 3/2021, p. 1.

[31] https://acs.cultura.gov.it/donneinarchivio-le-donne-della-costituente/

[32] Sulla figura di Nilde Iotti si richiama il ricco materiale presente sul sito della Fondazione a lei intitolata che raccoglie anche diverse pubblicazioni https://www.fondazionenildeiotti.it/. Per la sua vita si richiama, *ex multis*, Fondazione Nilde Iotti (a cura di), *Nilde. Parole e scritti 1955-1998*, Health Communication, Roma, 2010; Fondazione Nilde Iotti (a cura di), *La Presidente*, Harpo editore, Roma, 2019; L. LAMA, *Nilde Iotti. Una storia politica al femminile*, Donzelli editore, Roma, 2013; M.S. PALIERI, *La regina rossa. Nilde Iotti,* in P. Cioni, E. Doni, C. Galimberti, L. Levi, M.S. Palieri, F. Sancin, C. Di San Marzano, F. Tagliaventi, C. Valentini (a cura di), *Donne della Repubblica*, Il Mulino, Bologna, 2016; S.C. PERRONI, *Leonilde. Storia eccezionale di una donna normale,* Bompiani, Milano, 2010; L. SETTIMELLI, *La ragione e il sentimento. Ritratto di Nilde Iotti*, Castelvecchi, Roma, 2009.

[33] L. LAMA, cit., p. 61.

popolo italiano che ha pur qualcosa da dire, che ha lavorato con voi, con voi ha sofferto, ha resistito, ha combattuto, con voi ha vinto con armi talvolta diverse, ma talvolta simili alle vostre e che ora con voi lotta per una democrazia che sia libertà politica, giustizia sociale, elevazione morale»[34]. Tra tutte le donne, si trovavano certamente in una posizione di particolare difficoltà le vedove di guerra, le quali, spesso, dovevano affrontare l'arduo compito di provvedere in prima persona e contando sulla loro sola forza lavorativa al mantenimento della famiglia. Per portare al centro dell'attenzione problematiche di questa parte fragile della popolazione, Nadia Gallico Spano[35] si fece promotrice di un ordine del giorno - firmato anche dalle altre costituenti Rita Montagnana, Lina Merlin, Teresa Mattei, Teresa Noce, Maria Maddalena Rossi, Bianca Bianchi, Filomena Delli Castelli, Angela Gotelli – che aveva il seguente contenuto

L'Assemblea Costituente, interprete della giustificata attesa popolare, chiede al Governo di voler estendere l'assegnazione del premio della Repubblica alle vedove di guerra ed alle mogli dei prigionieri, nella misura di lire 3.000, come manifestazione di solidarietà per le durissime condizioni dị vita in cui versano queste donne con le loro famiglie e che le pongono fra le più colpite e misere categorie della Nazione[36].

Nadia Gallico Spano ricordava come il premio della Repubblica non sostituisse l'adeguamento dei salari ma fosse un segno evidente della volontà del Governo «di aiutare le masse lavoratrici a superare l'attuale grave momento ed a permettere loro di aspettare con minore sofferenza nuovi più sostanziali provvedimenti». Secondo la deputata costituente, questo giusto riconoscimento per i lavoratori avrebbe dovuto essere esteso «ad un'altra categoria di capi famiglia che troppo spesso viene dimenticata ed esclusa dai minori benefici, categoria che ha invece diritto a tutto il rispetto e a tutta la solidarietà della nazione: alle vedove di guerra». Per il ruolo che stavano svolgendo in quel periodo storico e per le conseguenze della guerra che si riverberavano su di loro e sulle loro famiglie, esse avevano il diritto di godere delle

[34] A.M. GUIDI CINGOLANI, Consulta Nazionale, Assemblea plenaria, VI, seduta di lunedì 1° ottobre 1945, p. 121

[35] Per un profilo sulla biografia e l'attività politica delle donne che hanno partecipato all'Assemblea costituente si rimanda a Fondazione Nilde Iotti, *Costituenti al lavoro*, *Donne e costituzione 1946-1947,*Guida editori, Napoli, 2018; F. ARTALI, R. CAIROLI, M. CAVALLINI (a cura di), *Le costituenti: la parola alle* donne, Milano, Biblion, 2019; N. D'AMICO E C. D'AMICO, *Le ventuno tessitrici della Costituzione : i profili e gli interventi delle donne che fecero parte dell'Assemblea costituente*, Milano, Franco Angeli, 2020; R. Guerriero, *Le 21 perle della Costituzione: studio storico-biografico sulle Madri costituenti*, Firenze, Phasar, 2023. La stessa Nadia Gallico Spano ricordava così il suo ingresso in Parlamento nella sua autobiografia: « Il giorno in cui, con il mio bel vestito azzurro a fianco di Velio, entrai a Montecitorio, ero un po' impacciata. Vicino all'ingresso c'erano giornalisti e curiosi. Cercavo di apparire disinvolta e dignitosa. Avevamo appena superato i primi gradini, quando Velio mi piantò in asso, attraversò con due salti tutto l'atrio e si voltò commosso e affettuosamente ironico per assistere al mio ingresso. In quel momento, dietro a me, udii un commesso che mi si rivolgeva con queste parole: "Pss pss ma dove va Lei?". Timidamente risposi che dovevo entrare perché ero appena stata eletta. "Anche lei!" fu il commento del commesso e non ho mai capito cosa volesse dire, se in lui prevalesse lo stupore o la sufficienza», N. GALLICO SPANO , *Mabrúk. Ricordi di un'inguaribile ottimista,* AM&D ,Cagliari, 2005, p. 261.
Al seguente link (https://giovani.camera.it/public/documenti/Le21donnedellaCostituente.pdf) è possibile scaricare il documento preparato dalla Camera dei Deputati che contiene un profilo biografico per ciascuna delle costituenti.

[36] Assemblea costituente, XIII, seduta di giovedì 25 luglio 1946, p. 334.

stesse tutele dei «capi famiglia disoccupati». La situazione che veniva delineata da Nadia Gallico Spano era decisamente negativa per le donne in generale e per le vedove di guerra in particolare

La guerra ha portato nelle loro case il lutto; vi ha portato inoltre, quasi sempre, la miseria. Prive di sostegni, esse hanno dovuto a poco a poco vendere tutto ciò che avevano in casa, cercando in pari tempo una occupazione, perché dovevano sostituire presso i loro bambini l'assente senza ritorno. Il lavoro è per esse una necessità assoluta. La pensione non solo è insufficiente a condurre una vita modesta ma decorosa, ma serve appena per i primi due o tre giorni del mese. Per tutto il resto del tempo, quando non vi è più niente da sacrificare, neppure i ricordi più cari, restano la miseria, la fame, la disperazione.

L'unica soluzione alle problematiche di carattere economico sarebbe stata la possibilità di trovare un'attività lavorativa anche per le donne, che supplisse alla mancanza dell'introito derivante dal lavoro del marito caduto, «ma il lavoro non si trova facilmente in un paese dove vi sono due milioni di disoccupati, molti dei quali hanno delle capacità e delle qualifiche e possono quindi aver facilmente la precedenza su donne che l'estremo bisogno solo ha fatte uscir di casa in cerca di lavoro».

Era, quindi, chiaro come – in una situazione che presentava molteplici problematiche anche per gli uomini, che pur potevano godere di maggiori qualifiche, il mondo del lavoro non lasciasse spazio alle donne, poiché «non si trova facilmente lavoro in un paese distrutto, paralizzato, privo di materie prime, in un paese infine in cui giustamente i reduci chiedono di essere riammessi per primi nel ciclo produttivo»[37]. Per queste ragioni la deputata chiedeva che

Le vedove di guerra hanno quindi diritto di ottenere questo duplice riconoscimento: primo, di essere considerate capi famiglia: esse hanno dovuto assumere per colpa della guerra tutte le responsabilità del capo famiglia ed è giusto che godano anche gli scarsi benefici collegati a tale qualifica; secondo, conseguentemente, anche se non sono mai state occupate, debbono essere considerate disoccupate e godere dell'assistenza concessa a questa immensa categoria[38].

Ancora un anno dopo, la deputata Nadia Gallico Spano tornava a chiedere, in seno all'Assemblea costituente, un'azione più incisiva a favore delle donne le quali

per la prima volta nella nostra storia, sono direttamente rappresentate. Esse si sono conquistate questo diritto partecipando con tutto il popolo alla grande battaglia della liberazione del nostro Paese, per l'avvenire e la felicità dell'Italia. Vi hanno partecipato con quello slancio, quell'entusiasmo, quello spirito di dedizione e di ardente amor patrio, che spinse le più nobili fra di esse fino ad affrontare con semplice e sublime serenità anche l'estremo sacrificio. Giovani e anziane, madri, spose e ragazze, intellettuali, operaie e contadine, esse sono le pure eroine del nostro Secondo Risorgimento[39]

[37] Assemblea costituente, XIII, seduta di giovedì 25 luglio 1946, p. 335
[38] *Ibidem.*
[39] Assemblea costituente, LV, seduta di sabato otto marzo 1947, p. 1900.

Nadia Gallico Spano sottolineava come, «nell'opera immane di rinascita e di ricostruzione del nostro Paese », le donne rivendicassero «lo stesso posto, la stessa parte di responsabilità e di lavoro». In particolare, la deputata, facendosi portavoce delle donne italiane, chiedeva che fosse assicurato il lavoro a tutti, l'assistenza a chi ne aveva bisogno, che fosse protetta la maternità, così come «l'infanzia riceva le cure morali e materiali necessarie, che alla vecchiaia siano dati segni concreti di rispetto e di riconoscenza»[40]. Con riguardo alla fondamentale attività lavorativa, si richiedeva che venisse parificata a quella degli uomini «l'indennità di contingenza percepita dalle lavoratrici, e nella riparazione delle conseguenze della guerra adeguando le pensioni al costo della vita, provvedendo effettivamente e rapidamente alla sistemazione degli orfani, sostenendo validamente le donne capo famiglia nel grave compito che esse debbono affrontare»[41]. L'analisi di tali lavori in seno all'Assemblea costituente, che sarà seguita dai dibattiti parlamentari del dopoguerra, consente di cogliere la mutevole dialettica tra tutela e subordinazione, tra riconoscimento e marginalità, che attraversa l'intera vicenda delle vedove di guerra nell'Italia repubblicana. In questo contesto, infatti, il discorso pubblico sulle vedove di guerra contribuì alla costruzione di una memoria nazionale in cui il dolore privato diveniva elemento di coesione collettiva. Tuttavia, la rappresentazione della vedova come figura "sacrificale" e moralmente esemplare rivelava anche la persistenza di stereotipi di genere, che limitarono a lungo il pieno riconoscimento del loro ruolo attivo nella ricostruzione materiale e civile del Paese.

Per far sì che tale cambiamento avvenisse, un tema centrale di discussione – importante anche per determinare un miglioramento delle condizioni delle vedove di guerra – era quello della famiglia, al quale venne dedicata specifica attenzione durante i lavori dell'Assemblea Costituente. Infatti, a partire dal 20 luglio 1946, venne creato il più ristretto gruppo della Commissione per la Costituzione, la cosiddetta "Commissione dei 75", incaricata di redigere il progetto di Costituzione che dovrà costituire la base per la discussione nel *plenum* dell'Assemblea[42]. Solo 5 donne entrarono a far parte di questo gruppo, tra le quali Nilde Iotti. All'interno della Commissione, articolata in tre sottocommissioni, Nilde Iotti fu assegnata alla Prima Sottocommissione, incaricata di elaborare le disposizioni relative ai diritti e ai doveri dei cittadini. Le fu affidato il compito, di particolare rilievo, di redigere una delle due relazioni concernenti la disciplina della famiglia[43]. La seconda relazione fu redatta da Camillo Corsanego, fondatore della neonata Democrazia Cristiana, professore universitario esperto di diritto ecclesiastico[44]

[40] Ivi, p. 1901.
[41] *Ibidem.*
[42] C. TRIPODINA, cit., p. 3.
[43] Commissione per la Costituzione, I sottocommissione, *Relazione dell'On. Signora Jotti Leonilde sulla famiglia.* La versione digitalizzata del documento è consultabile al seguente link: https://www.fondazionenildeiotti.it/docs/documento3494279.pdf
[44] Commissione per la Costituzione, I sottocommissione, *Relazione del deputato Camillo Corsanego sulla famiglia*. La versione digitalizzata del documento è consultabile al seguente link:

Nella sua relazione Nilde Iotti partiva dalla giusta constatazione per cui la costituzione allora vigente, lo Statuto Albertino, non contenesse «alcuna dichiarazione riguardante la famiglia e la posizione dello Stato di fronte ad essa». Al contrario, nel momento storico in cui lei scriveva, sarebbe stato impossibile ignorare «nella nuova Costituzione della Repubblica italiana, i problemi che interessano la unità familiare, la sua struttura più generale, la protezione di essa da parte dello Stato»[45]. Una visione decisamente più ancorata al passato trapelava dalle parole del prof. Corsanego, il quale la definiva come «istituzione naturale dotata di diritti innati, anteriori e superiori a qualsiasi legge positiva» rispetto alla quale «l'eredità del diritto romano, la civiltà cristiana e una esperienza plurisecolare hanno creato una tradizione sociale e giuridica per la quale l'efficienza spirituale e materiale della famiglia contribuisce più di qualunque altro fattore a determinare il progresso spirituale e materiale della società civile»[46].

Come ricordava Nilde Iotti, era proprio la famiglia a risentire in prima battuta delle conseguenze negative della guerra, che aveva «scosso e sconvolto i rapporti economici e sociali così profondamente come mai era avvenuto nella storia del nostro Paese. Una grave crisi travaglia la Nazione e ha le sue prime manifestazioni - e talora alcune delle più gravi - nel campo stesso della vita familiare». Allo stesso tempo, Nilde Iotti sosteneva come «il rinnovamento materiale e morale della vita italiana» dovesse partire dalla famiglia. Le riflessioni di Nilde Iotti evidenziano la centralità della famiglia quale nucleo fondativo dell'ordine sociale, individuandola non soltanto come la prima vittima delle profonde lacerazioni prodotte dal conflitto, ma anche come il punto di avvio imprescindibile del processo di ricostruzione morale, civile e istituzionale del Paese.

In tale prospettiva, la famiglia si configura come paradigma del più ampio rinnovamento della società italiana nel secondo dopoguerra. Lo spirito che avrebbe dovuto animare il lavoro della Commissione ed il contenuto della nuova costituzione era chiaro poiché si «impone[va] infatti anche in questo campo un'opera di svecchiamento e rinnovamento democratico, conforme allo spirito che deve ispirare la nuova Costituzione e tutta la vita italiana del nuovo regime repubblicano»[47].

In quel contesto storico, il diritto di famiglia risultava ancora disciplinato dal Codice civile del 1942, espressione della cultura giuridica e politica del regime fascista. All'interno della famiglia, la donna versava in una condizione di minorità giuridica e di subordinazione rispetto al marito, tanto nei rapporti patrimoniali quanto in quelli personali, sia nelle relazioni coniugali sia in quelle con i figli. Non solo, i figli nati fuori dal matrimonio erano destinatari di un trattamento giuridico fortemente discriminatorio rispetto a quelli legittimi. Ma, sottolinea Nilde Iotti, il problema non dipendeva soltanto dalla «vecchia

https://legislature.camera.it/_dati/costituente/lavori/relaz_proposte/I_Sottocommissione/07nc.pdf

[45] Commissione per la Costituzione, I sottocommissione, *Relazione dell'On. Signora Jotti Leonilde sulla famiglia,* p. 55.

[46] Commissione per la Costituzione, I sottocommissione, *Relazione del deputato Camillo Corsanego sulla famiglia*, p. 53.

[47] Commissione per la Costituzione, I sottocommissione, *Relazione dell'On. Signora Jotti Leonilde sulla famiglia,* p. 55.

legislazione», ma anche, ed in misura determinante, dal «vecchio costume del nostro Paese»: la famiglia che ne risulta era pertanto «antidemocratica»[48].

Tale rinnovamento in senso democratico avrebbe necessariamente coinvolto anche le donne

Uno dei coniugi poi, la donna, era ed è tuttora legata a condizioni arretrate che la pongono in stato di inferiorità e fanno sì che la vita familiare sia per essa un peso e non fonte di gioia e aiuto per lo sviluppo della propria persona. Dal momento che alla donna è stata riconosciuta, nel campo politico, piena eguaglianza col diritto di voto attivo e passivo, ne consegue che la donna stessa dovrà essere emancipata dalle condizioni di arretratezza e di inferiorità in tutti i campi della vita sociale e restituita a una posizione giuridica tale da non menomare la sua personalità e la sua dignità di cittadina.

Un cambiamento decisivo per il cambiamento del ruolo sociale della donna avrebbe dovuto essere quello del suo accesso al lavoro, come avevano dimostrato le difficoltà incontrate dalle donne in generale e dalle vedove di guerra in particolare, durante e dopo il conflitto.

Per queste ragioni era necessario che il diritto al lavoro fosse affermato «per tutti i cittadini senza differenza di sesso». Poiché

Solo realizzando nella pratica il suo diritto al lavoro la donna acquista quella indipendenza, base di una vera e compiuta personalità, che le consente di vedere nel matrimonio non più un espediente talora forzato per risolvere una situazione economica difficile e assicurarsi l'esistenza, ma la soddisfazione di una profonda esigenza naturale, morale e sociale, e lo sviluppo e il coronamento, nella libertà, della propria persona[49].

Dal fatto che la donna potesse svolgere attività lavorativa anche al di fuori dalla famiglia non sarebbe derivato alcun pericolo per l'unità della famiglia, come alcuni paventavano. Al contrario, rappresentando uno strumento per il miglioramento delle condizioni economiche di tutto il nucleo famigliare, il lavoro delle donne avrebbe contributo a far sì che si rafforzasse migliorasse «l'istituto familiare stesso, cui verrà conferito una impronta di serenità e dignità che finora non ha sempre posseduto»[50]. In base a tali idee, principio ispiratore per la nuova costituzione avrebbe dovuto essere il seguente

1°) Ciascun cittadino deve avere una condizione economica tale che gli permetta di formarsi una famiglia e di provvedere al suo sostentamento. Tale condizione è strettamente legata alle possibilità di lavoro che la Repubblica deve poter garantire a chiunque e ad una retribuzione adeguata.
[…]

[48] C. TRIPODINA, cit., p. 5.
[49] Commissione per la Costituzione, I sottocommissione, *Relazione dell'On. Signora Jotti Leonilde sulla famiglia,* p. 56.
[50] *Ibidem.*

2°) Deve essere riconosciuto il principio della eguaglianza giuridica dei coniugi. Il matrimonio diventa così unione liberamente consentita di due persone giuridicamente uguali e la donna viene tolta da quello stato di inferiorità che non corrisponde alle esigenze di una società moderna[51]

Da questi nuovi princìpi sarebbe dunque dipesa la possibilità, anche per le vedove di guerra, di ricostruire la loro posizione economica e sociale attraverso non solo l'assistenza ed il supporto pubblico ma proprio grazie al loro stesso lavoro. Furono le idee sostenute da Nilde Iotti ad influire sul contenuto della futura costituzione e, con la nascita della Repubblica e l'entrata in vigore della Costituzione del 1948, a determinare un profondo mutamento. La nuova cultura dei diritti, fondata sui principi di uguaglianza sostanziale (art. 3) e di tutela della famiglia e del lavoro (artt. 29-37), spinse verso una riformulazione del rapporto tra cittadinanza e assistenza. Le successive leggi di riordino delle pensioni di guerra (in particolare il D.P.R. n. 915 del 23 dicembre 1978, che riorganizzò la materia in senso più unitario) introdussero criteri più equi e riconobbero progressivamente la soggettività delle beneficiarie, superando — almeno in parte — la logica meramente risarcitoria o simbolica che aveva caratterizzato l'epoca precedente.

In tale prospettiva, la transizione dal paradigma assistenziale a quello partecipativo segna l'ingresso delle donne, e in particolare delle vedove di guerra, in una nuova dimensione di cittadinanza sociale, fondata non più soltanto sulla protezione, ma sul riconoscimento della loro dignità, autonomia e funzione nella vita democratica del Paese. La figura della vedova di guerra rappresenta, nel contesto giuridico e sociale del secondo dopoguerra, un punto di snodo emblematico tra memoria del sacrificio e costruzione della cittadinanza repubblicana. Da soggetto tradizionalmente tutelato in quanto depositaria del dolore familiare, la vedova si trasforma progressivamente in attrice consapevole della ricostruzione nazionale, contribuendo — anche attraverso la mediazione legislativa e politica di figure come Nadia Gallico Spano e Nilde Iotti — alla ridefinizione del ruolo femminile nello spazio pubblico.

[51] *Ibidem*. Alla luce di questi principi, propone l'approvazione dell'articolo: «Lo Stato prenderà appropriate misure per facilitare ad ogni cittadino la costituzione di una famiglia e per rendere economicamente meno gravoso l'adempimento degli oneri familiari, soprattutto ai meno abbienti e alle famiglie numerose». È la prima formulazione di ciò che diventerà, nei vari passaggi in Costituente, l'articolo 31.1 Cost.: «La Repubblica agevola con misure economiche e altre provvidenze la formazione della famiglia e l'adempimento dei compiti relativi, con particolare riguardo alle famiglie numerose». In attuazione del secondo principio, si propose in discussione l'articolo: «Il matrimonio è basato sul principio dell'eguaglianza giuridica dei coniugi». Diventerà, con la chiusa di compromesso voluta dalla Democrazia cristiana, l'art. 29.2 Cost.: «Il matrimonio è ordinato sull'eguaglianza morale e giuridica dei coniugi, con i limiti stabiliti dalla legge a garanzia dell'unità famigliare», C. TRIPODINA, cit., p. 7.
Di tutt'altro tenore era la proposta del prof. Corsanego, il quale proponeva come primo articolo «Lo Stato riconosce la famiglia come la unità naturale e fondamentale della società, con i suoi diritti originari inalienabili e imprescrittibili concernenti la sua costituzione, la sua finalità e là sua difesa». Si trattava, a suo avviso, di «una netta presa di posizione contro il concetto fascista che lo Stato sia l'unica fonte di diritto e che individui ed enti posseggano solo quel tanto di diritti che allo Stato, feudo del partito dominante, piaccia consentire. La famiglia preesiste allo Stato, il quale non crea, ma ne riconosce e regola i diritti innati e inalienabili», Commissione per la Costituzione, I sottocommissione, *Relazione del deputato Camillo Corsanego sulla famiglia*, p. 54.

Gendered and Environmental Dimensions of Reparations in Post-Conflict Ukraine: Challenges and Opportunities *

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Abstract [En]: This article examines the evolving landscape of post-conflict justice through the lens of Russia's invasion of Ukraine, highlighting the long-term environmental and gendered impacts of war. It critiques traditional legal frameworks for failing to address these invisible harms and advocates for a victim-centred model of transformative reparations. Drawing on instruments like the UN Basic Principles and Security Council Resolution 1325, the paper proposes a dual-layered approach to reparations. It argues that inter-state mechanisms must be complemented by structural reforms to ensure lasting recovery. Ukraine's case offers a unique opportunity to advance international law toward a more inclusive and future-oriented reparative and transformative justice.

Abstract [It]: Il presente contributo analizza l'evoluzione della giustizia post-bellica attraverso il caso dell'invasione dell'Ucraina da parte della Federazione Russa, mettendo in luce gli impatti a lungo termine e spesso invisibili della guerra, in particolare quelli ambientali e di genere. Viene criticato l'approccio tradizionale del diritto internazionale, che tende a non considerare tali danni, e si propone un modello di riparazioni trasformative incentrato sulle vittime. Richiamando strumenti come i *Basic Principles* delle Nazioni Unite e la Risoluzione 1325 del Consiglio di Sicurezza, il contributo propone un approccio alle riparazioni strutturato su due piani. Si sostiene che i meccanismi interstatali debbano essere affiancati da riforme strutturali per garantire una ripresa che possa durare. Il caso ucraino rappresenta un'opportunità di avanzamento del diritto internazionale verso una giustizia riparativa e trasformativa più inclusiva e orientata al futuro.

Keywords: Ukraine; Transitional Justice; Transformative Reparations; Just Post Bellum; Resolution 1325.

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1. Introduction

The Russian Federation's full-scale invasion of Ukraine, after 8 years of low intensity proxy war started in 2014, has reinvigorated urgent debates about the scope and meaning of post-conflict justice. While international law has long provided mechanisms for state responsibility and reparations, these tools often fall short in addressing the long-term and invisible consequences of modern warfare. This paper focuses on those overlooked dimensions, specifically environmental degradation and gender-based elements leading to increased vulnerabilities and interrogates how international legal frameworks must evolve to

* Peer reviewed.

respond to them. Using Ukraine as a case study, the paper advocates for a forward-looking, victim-centred model of transformative reparations as essential to sustainable recovery. This contribution unfolds in five interlinked sections. Following this brief introduction, the second section addresses the slow and often unseen impacts of war on the environment and social structures, including contaminated land, degraded ecosystems, and gendered health outcomes resulting from displacement and environmental harm. These harms are typically excluded from traditional reparations frameworks, despite their enduring effects on human well-being and national resilience. The third section explores how international law has approached post-conflict reconstruction, particularly through the doctrines of state responsibility and *jus post bellum*, and how these have expanded over time to encompass reconciliation, transitional justice and culminating in transformative reparations. In this light, special attention is given to instruments such as the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter Basic Principles and Guidelines),[1] and United Nations Security Council Resolution 1325 (2000) (hereinafter Resolution 1325),[2] which together shift the focus from restoration to structural transformation, emphasising the rights and participation of victims. The fourth section proposes a dual-layered reparations model tailored to the Ukrainian context. It argues that inter-state reparations must be complemented by transformative, victim-focused mechanisms capable of addressing systemic inequality and rebuilding institutions. Drawing on historical precedents and current international practice, the paper outlines possible legal avenues for reparations—from litigation before the International Court of Justice (ICJ) and *ad hoc* tribunals to national and international victim compensation funds. This paper suggests that Ukraine's post-war recovery provides a critical opportunity to reshape the normative contours of reparative justice. A gender- and environmentally-informed approach not only delivers more meaningful redress to victims, but also strengthens international law's capacity to confront the evolving realities of conflict in the 21st century.

2. War in Ukraine and Long-term Impact

The long-term environmental consequences of the war in Ukraine represent a profound and multifaceted crisis, with effects that are likely to persist for generations.[3] Although awareness of war-related environmental destruction has been steadily increasing since the atomic bombings of Hiroshima and

[1] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly resolution 60/147 of 16 December 2005, A/RES/60/147.
[2] UN Security Council Resolution 1325 (2000) of 31 October 2000, Landmark resolution on Women, Peace and Security, S/RES/1325 (2000).
[3] See P. BARBIROTTO, *The Slow Effects of the War in Ukraine and International Law*, in Opinio Juris,14 September 2023.

Nagasaki, and even more so following the Vietnam War, the full-scale invasion of Ukraine by the Russian Federation on 24 February 2022,[4] has placed the international community before the urgent need to address these impacts within the contemporary international legal framework. The war outbroke in a moment where the international community, after the COVID pandemic, was intensifying efforts to combat environmental degradation and slow the progression of climate change.

While the interconnection of armed conflict and the environment has drawn substantial attention from scholars and practitioners,[5] much of this attention has centred on immediate and dramatic consequences, such as spikes in air pollution due to bombings or the devastating destruction of infrastructure like the Kakhovka dam and subsequent floodings.[6] While these events are undeniably catastrophic, a large part of the environmental toll remains hidden, unfolding slowly over time in ways that threaten ecosystems, human health, and food systems long after the last missile has been launched. The war in Ukraine provides a dramatic example of how modern conflict increasingly produces slow violence, a term used to describe environmental degradation that is dispersed across time and space,[7] leading to chronic emergencies, that is virtually invisible, low-intensity adverse effects that tend to impact harder on certain social groups, made more vulnerable by structural social elements.[8] These concepts are often overlooked in traditional assessments of war damage, even if they are an almost unavoidable consequence of wars.

Among the most insidious of these effects is the contamination of soil and water, caused by the detonation of explosive ordnance, the destruction or the abandonment of industrial sites with spills of toxic chemicals, and the disruption of waste and chemical storage facilities. In Ukraine, a country with vast agricultural output and a pivotal role in global food supply chains,[9] such contamination poses a long-term threat not only to national food security but to international food markets, particularly in vulnerable regions reliant on Ukrainian grain exports. Polluted soil diminishes crop yields and can render entire regions agriculturally unviable, while water contamination from heavy metals, oil spills, and hazardous chemicals endangers both human consumption and aquatic biodiversity. Furthermore, the compounding effects of environmental degradation and climate change, such as increased drought risk and loss of arable land, may intensify the severity of post-war recovery and economic rebuilding.

[4] UN Nations General Assembly Resolution ES-11/1 of 2 March 2022, A/RES/ES-11/1.
[5] See, for instance, Rules 43-45 of the IRCC Codification of Customary International Humanitarian Law, and the IRCC Guidelines on the Protection of the Natural Environment in Armed Conflict (2020).
[6] For an overview see K. HULME (ed.), *Law of the Environment and Armed Conflict*, Cheltenham. Edward Elgar Publishing, 2017.
[7] R. NIXON, *Slow Violence and the Environmentalism of the Poor*, Cambridge, Harvard University Press, 2011.
[8] S. DE VIDO, *In dubio pro futuris generationibus: una risposta giuridica eco-centrica alla slow violence*, in M. FRULLI (ed.), *L'interesse delle future generazioni nel diritto internazionale*, Napoli, Editoriale scientifica. 2022, pp. 419-445.
[9] See UN World Food Programme, *Ukraine – Supporting exports of Ukrainian food*, May 2025.

This is only one side of the 'long-term invisible effects' medal. These environmental issues in fact, do not exist in a vacuum but are deeply interconnected with social and demographic transformations spurred by the conflict. The widespread displacement of civilians, particularly women and children, and the high mortality rate among men have the potential to reshape Ukraine's social structure in unpredictable ways.[10] As displaced populations return to potentially contaminated or degraded land, the health impacts, that may range from more visible symptoms to other that manifest in years or even decades, such as reproductive disorders, may disproportionately affect women and children. Such gendered dimensions of environmental harm remain underestimated and hardly enters the picture of post-war negotiations. Still, they are crucial for designing equitable post-conflict recovery policies.

Moreover, the burden of environmental recovery, that is remediating contaminated areas, rebuilding in a more sustainable way focusing on green infrastructure and restoring ecosystems, will fall on Ukraine, a state already dealing with immense demographic and economic losses.[11] From a legal perspective, addressing these long-term environmental damages and social adverse effects presents a unprecedented challenge. International humanitarian law, while recognizing a general need to protect the environment during armed conflicts, actually does not entail strong enforcement mechanisms and prioritises military operations,[12] and is inadequate in addressing slow-onset harms. For this reason, it is essential to hold the Russian Federation accountable not only for the immediate physical destruction caused by the armed conflict, but also for the long-term damages that may emerge gradually over the years. These include the aforementioned environmental degradation, public health crises, and socio-economic destabilisation, all of which may result from war but fall outside the scope of conventional definitions of war damage. This requires a rethinking of the traditional legal approaches to post-war responsibility and reparations. In particular, there is a pressing need to develop a legal framework that explicitly recognises environmental harm as a traceable, and prosecutable category of war damage. Such a framework should allow for adequate attribution of responsibility, support for affected communities, and the integration of environmental justice into the broader discourse on accountability and post-conflict recovery.

Establishing legal responsibility for long-term damage is particularly complex when causal chains unfold over decades and are compounded by a range of environmental, societal, and economic factors. However, innovation in this area is not only desirable, but also necessary. For Ukraine, this innovation is critical to

[10] On social transformations see, for instance, O. DEINEKO, *Ukraine, War and Resistance: Reshaping Social Cohesion,* in *Studia Socjologiczne*. n. 2(249), 2023, pp. 155-177.

[11] The IMF estimated a GDP contraction of 28.8% in 2022, followed by modest growth of 5.3% in 2023 and a projected 3.5% in 2024, primarily driven by the war effort. See: IMF, *Ukraine: Seventh Review Under the Extended Arrangement Under the Extended Fund Facility, Requests for Modification of a Performance Criterion, Rephasing of Access, and Financing Assurances Review-Press Release; Staff Report; and Statement by the Alternate Executive Director for Ukraine*
, Country Report No. 2025/078.

[12] See ICRCC 2020 Guidelines on Protection of the Natural Environment in Armed Conflict, *cit.*

ensuring a comprehensive and future-oriented recovery; for the international community, it offers an opportunity to rethink and modernise certain aspects of international law, particularly in relation to State responsibility, environmental protection, and the rights of affected populations. The goal must go beyond repairing what has been lost. It must also involve constructing new legal, ecological, and social systems that are resilient to future crises. The long-term environmental and social consequences of the war in Ukraine, though difficult to quantify and address, must be treated with the same urgency and seriousness as the immediate humanitarian and geopolitical dimensions of the conflict. Recognising and integrating these challenges into post-war accountability and justice frameworks will be a crucial step toward building lasting peace.

3. The Law of Post-war Reconstruction

3.1. The Traditional Approach to Reparations

The moment when an armed conflict end, represents the contextual commencement of an extremely challenging process, often oversimplified by the word reconstruction. Actually, to reconstruct after a war means reconstruct lives, communities, institutions, all heavily impacted by violence. Reconstruction does not only mean that the armed conflict is finally over, but also represents an opportunity for healing the wounds leave by the armed conflict and for accountability of those responsible for the occurred violence. To achieve that, nonetheless, is necessary to go beyond the material restoration of what has been lost, which can be eventually done in a relatively short time, and requires to tackle the profound, often invisible, long-lasting social and emotional impacts that are the basis for enduring, persistent challenges. The reconstruction effort requires the joint contribution of specialists from diverse disciplines, including law, public policy, sociology, economics, and psychology, uniting to assist societies in their path to through the after-conflict normality.

When the discourse regards an international armed conflict, it is international law the discipline providing the framework of rules and principles to inform the reconstruction process. Traditionally, this emphasis has centred on the notion of state responsibility and the obligation to provide full reparations for the injury caused.[13] The focus has historically been on the restoration of the prior condition, the *status ante quo*, essentially, aiming at reverting circumstances to their state prior to the commencement of hostilities.[14] As such, the favoured mean of reparation is restitution, and only when restitution in full is not feasible, additional remedies such as compensation for damages or satisfaction for non-material harm are be

[13] Art. 31.1 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (hereinafter ARSIWA), adopted by the International Law Commission at its fifty-third session, in 2001. The UN General Assembly took note of the ARSIWA in resolution 56/83 of 12 December 2001, A/RES/56/83.
[14] Art. 35 ARSIWA.

considered.[15] Following the Second World War, such an inter-state understanding has been increasingly complemented with initiatives aimed at ensuring accountability for individuals implicated in international crimes perpetrated during the conflict.[16]

The described model presents indeed certain limitations. Compensation has frequently been limited to damages that are concrete, measurable, and directly associated with particular wrongful actions, following the traditional legal principle of the direct link between the wrongdoing and the injury.[17] The calculation of the quantum often serves as pivotal elements in negotiations during peace talks and this is then incorporated into the peace treaty. Nonetheless, as time has progressed, it has become increasingly evident, that such inter-state approach does not truly compensate for the all the damages caused by the war, and in particular mostly ignores the lasting effects of modern conflicts, such as community trauma, systemic injustices, and environmental degradation.

In fact, looking at the described legal framework for it appears how the system looks to the past, rather than to the future and to the development of improved alternatives. While this is understandable, since the objective is to put an end to an armed conflict, a situation of abnormality in international relations,[18] and to conclude all disputes and legal matters that arise in connection to the war, it fails to address the causes of the conflict nor the entrenched injustices that initially ignited the conflict. The consequence of this is that unaddressed grievances may persist, thereby increasing the likelihood of re-emerging hostilities.

Once these limitations have been recognised, international law has shown increasing attention to the aftermath of the conflict as a whole, not only as a matter of inter-state relations. The notion of *jus post bellum*, Latin for law after war, has developed to broaden the agenda following an armed conflict.[19] The scope of the post-war measures is expanded beyond mere state responsibility, monetary compensation, and eventual individual accountability, and the efforts have started focussing on adopting measures designed to reconstruct societies fundamentally. For instance, among post-war measures adopted in the last 80 years, can be noted the enhancement of democratic institutions, the support of civil society, and the promotion of reconciliation and healing processes.[20]

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[15] Art. 36-37 ARSIWA.

[16] For a brief summary of the relation between international humanitarian law and international criminal justice see H. D. T. GUTIERREZ POSSE, *The relationship between international humanitarian law and the international criminal tribunals*, in *International Review of the Red Cross*, n. 861(88), 2006, pp. 65-86.

[17] Art. 36.2 ARSIWA.

[18] Conference of the United Nation on the Law of Treaties, first and second sessions, Official Records, A/CONF.39/11/Add.2, p. 87.

[19] On *jus post bellum* see C. STAHN, J. IVERSON, J. S. EASTERDAY (eds.), *Jus Post Bellum: Mapping the Normative Foundations*, Oxford, Oxford University Press, 2014.

[20] See, for instance, D. BLOOMFIELD, T. BARNES, L. HUYSE (eds.), *Reconciliation After Violent Conflict*, Stockholm, International IDEA, 2003.

This allows to take a further step and to look at reconciliation, that is the reestablishment of trust among individuals, communities, and, at times, between previously opposing parties.[21] Promoting reconciliation acknowledges the necessity of addressing the underlying causes of violence, facilitating mutual recognition between previously opposing parties, and whenever possible striving for a collective future.[22] This can be done only if the serious human rights violations occurred during the armed conflict are addressed, and this can be done through mechanisms that fall under the umbrella of transitional justice. Transitional justice encompasses a variety of mechanisms, including truth commissions, criminal trials, reparations, but also institutional reforms, all designed to assist societies in reconciling with their historical injustices, ensuring accountability for offenders, and restoring dignity to those who have suffered.

Looked at together, as two sides of a coin, the concepts of reconciliation and transitional justice collectively embody a comprehensive approach to the reconstruction process following an armed conflict. They challenge the idea of wars as a matter for inter-state relations and contest the notion that justice solely pertains to the restoration of what has been lost, and instead look forward at how it is possible to build a more positive future. By doing so, they allow to find avenues to tackle the invisible effects of armed conflicts that public international law fails to see, such as environmental degradation and the not only disproportionate, but also long-lasting, impacts of conflict on women and marginalised groups, and lastly on future generations. In this context, reparations can be regarded not just as a mere set of legal obligations but as an essential element in the establishment of lasting peace. They serve as instruments not solely for responsibility towards the past, but also for transformation, facilitating the transition of societies from conflict to coexistence in a manner that is inclusive, sustainable, and grounded in human dignity.

3.2 Transitional Justice

Based on the aforementioned, in the described just post bellum framework, transitional justice occupies a central role. The concept of transitional justice is not exclusively tied to international armed conflicts, and actually it emerged and developed in response to gross and systematic violations of human rights occurred not necessarily within an armed conflict. Nonetheless, it has proven particularly relevant in post-conflict, as well as in post-authoritarian transition. Its overarching aim is to facilitate the transition of an impacted society from a period of violence and repression to one characterized by peace, democracy, and the rule of law. As such, it does not entail a single, rigid set of mechanisms, but it rather offers a flexible and context-sensitive roadmap comprising various strategies intended to achieve lasting peace and

[21] See for instance the case of Bosnia and Herzegovina and the Dayton Agreements.
[22] The recognition of the opposite party can be manipulated and used for secessionist goals, see for instance the case of Republika Srpksa.

justice.[23] Criminal prosecutions, truth commissions, reparations programs, guarantees of non-repetition, and institutional reforms are all tools to be used in order to achieve the goals of transitional justice rather than fixed steps to be mechanically implemented. The link between these mechanisms is their shared objective: to address the legacy of past abuses, recognize the suffering of victims, and confront the structural conditions that enabled the violence, or that have been created by the violence.

In this sense, transitional justice represents an evolution within the framework of *jus post bellum*, complementing the principles of the latter by expanding the legal and moral horizons of post-conflict recovery. It allows to shifts the focus far beyond the mere restoration of order or the allocation of reparations, towards an agenda that can be qualified as transformative, and that prioritises the creation of a more inclusive, equitable society, and ultimately more resilient.[24] Looking at transitional justice from the perspective of international law, the foundational framework can be traced to key instruments developed under the auspices of the United Nations in early XXI century. The first instrument is the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (also known as the Joinet/Orentlicher Principles), adopted by the Commission on Human Rights on 8 February 2005,[25] as an update to the 1997 Report on the Question of the impunity of perpetrators of human rights violations (civil and political).[26] These principles articulate a framework aimed at addressing impunity and securing justice for victims of gross violations of human rights and serious breaches of international humanitarian law. The principles are elaborated around three core pillars: the right to truth, the right to justice, and the right to reparation and guarantees of non-repetition.[27] Such a structure reflects the integrated vision of justice that goes beyond inter-state responsibility and international criminal accountability and acknowledges the multifaceted needs of victims and the importance of structural transformation to prevent future violence. The principles also emphasise the obligation of States to investigate past violations and ensure institutional reforms that can restore public trust. By focusing not only on individual accountability but also on systemic change, the Joinet/Orentlicher Principles have become a foundational reference for transitional justice frameworks worldwide, particularly in post-conflict contexts where rebuilding legitimacy and civic trust is critical.

The second instrument, that reinforces the principles, are the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International

[23] International Center for Transitional Justice (ICTJ), What Is Transitional Justice?.
[24] ICTJ, *ibid.*
[25] Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1 of 8 February 2005
[26] Report on the Question of the impunity of perpetrators of human rights violations (civil and political) : revised final report / prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/20/Rev.1.
[27] Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, *cit.*

Human Rights Law and Serious Violations of International Humanitarian Law mentioned in the introduction. The UN Basic Principles and Guidelines were adopted by the UN General Assembly on 16 December 2005.[28] This instrument builds upon existing obligations under public international law, particularly those relating to state international responsibility, and reinterprets them through a victim-centred lens. The Basic Principles and Guidelines affirm the right of the victims to effective remedies and to adequate, effective, and prompt reparation for the harm suffered. The Basic Principles and Guidelines mark a milestone in the evolution of the international legal understanding of reparations. While traditional public international law has primarily framed reparations in terms of inter-state responsibility, wherein one State owes reparations to another for an internationally wrongful act, the Basic Principles and Guidelines extend this scope and include individuals as rights-holders. Subsequently, reparations are no longer conceptualised solely as inter-state obligations but also as a constituent component of post-war justice for the individuals whose rights have been gravely violated. Such understanding of reparations is not limited to the traditional elements of compensation, restitution, and satisfaction, but also includes measures of rehabilitation and guarantees of non-repetition, tailored to the experiences and specific needs of victims. Moreover, the Principles recognise the importance of participation, non-discrimination, and cultural appropriateness in designing and implementing reparation programmes. This approach reflects a deeper commitment to restorative justice, in which victims are not merely passive recipients but active stakeholders in the reconstruction of legal, social, and institutional order following mass atrocities. [29]

In addition to the two instruments mentioned above, an increasingly indispensable component of the international legal framework on transitional justice is the aforementioned United Nations Security Council Resolution 1325 (2000), adopted unanimously by the UN Security Council on 31 October 2000. [30] While originally conceived within the broader framework of peace and security, Resolution 1325 has since assumed a central role in shaping post-conflict transitional justice efforts. The resolution recognises the disproportionate impact of armed conflict on women and girls and underscores the crucial role of women in the prevention, management, and resolution of conflict, including their active participation in peace negotiations and post-war reconstruction processes. Importantly, Resolution 1325 calls for the integration of a gender perspective in all stages of peacebuilding, emphasising the need to address structural inequalities, particularly those rooted in gender-based hierarchies, that are often exacerbated by war and carry long-lasting consequences for affected societies. By embedding gender-sensitive approaches into peace and justice mechanisms, Resolution 1325 reinforces the transformative potential

[28] Principles and Guidelines, *cit.*
[29] Ch. VII et seq. of the Basic Principles and Guidelines, *cit.*.
[30] Resolution 1325, *cit.*

of transitional justice, ensuring that post-conflict rebuilding is not only inclusive but also capable of redressing deep-rooted injustices.

What Resolution 1325 marks is a watershed moment in international law by making visible the differentiated impact of armed conflicts on women and girls, and by acknowledging that conflict and post-conflict dynamics are not gender-neutral. The states and all the relevant actors are called to ensure the increased participation of women at decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict. Such a resolution should integrate a gender perspective, including in the negotiation and implementation of peace agreements. This involves not only ensuring that the specific needs and experiences of women are reflected in legal and institutional responses, but also, and more importantly, addressing the structural conditions rooted in legal, political, social, and economic structures, that contribute to perpetuate gender-based inequality. In doing so, the focus is necessarily shifted from short-term stabilization toward the long-term transformation of power relations that underpin both conflict and peacetime inequality. Resolution 1325 thus can be seen as a bridge between traditional peacebuilding and transitional justice. It articulates a vision of post-conflict justice that moves beyond the mere cessation of hostilities or restoration of the status quo ante, and instead promotes the construction of more inclusive, equitable, and resilient societies. Its integration into transitional justice practice affirms that achieving sustainable peace requires not only accountability for past violations, but also a proactive commitment to dismantling the structural injustices that contribute to conflict and instability.

The described framework paves the way to rethink post-conflict justice and to redesign it into one that transcends the narrow objective of restoring the *status ante quo*. Rather than merely attempting to reinstate the conditions that prevailed prior to the outbreak of violence, conditions which often contain the very seeds of conflict, contemporary international legal practice is called to adopt a forward-looking vision. Within this vision, post-conflict processes are not limited to rectifying isolated harms, but are understood as opportunities to address structural inequalities and systemic injustices that contributed to the eruption and prolongation of armed conflict, or that have eventually been created by the conflict itself. At the heart of this evolving approach lies the reparation component of transitional justice.

3.3. Transformative Reparations

Building on the foundations of transitional justice, the concept of transformative reparations has emerged as a critical normative development for contemporary post-conflict discourse. Unlike traditional forms of reparation, which primarily aim to restore victims to their previous condition, transformative reparations seek not only to redress past harms but also to reshape the structural conditions that allowed

such harms to occur. At their core, these measures are grounded in the recognition that post-conflict societies are often marked by systemic inequalities and entrenched forms of exclusion that cannot be meaningfully addressed through financial compensation or symbolic gestures alone. No longer confined to material compensation or symbolic acts of redress, reparations are reconceptualised as transformative tools capable of contributing to societal reconstruction and institutional reform.[31] To do so, what is required is a shift in perspective, extending the temporal dimension from the crisis to the process, and think in intersectional terms.[32]

The underlying philosophy of transformative reparations rests on a holistic understanding of justice, one that transcends the inter-state, restitutive logic of public international law. Under the transformative lens, the individuals are not seen merely as the receivers of compensation for losses suffered, but are placed in a position that allows them to reclaim agency, dignity, and participation in the post-conflict social order. This approach foregrounds the potential of reparative mechanisms to address long-standing socio-economic injustices and to contribute to sustainable peacebuilding and to reducing the causes of increased vulnerability of certain social groups during armed conflicts.

When it comes to compensation to the victims, traditional forms of reparation have often proven inadequate in achieving justice, particularly in deeply unequal or impoverished societies. Historical examples have shown important limitations in the models adopted in transitional periods. In certain contexts, such as in Bosnia and Herzegovina, compensations have happened only after decades and following long, stressful processes before courts.[33] In other cases, for example in post-apartheid South Africa, more structured models have been established, such as the Urgent Interim Reparation scheme. Nonetheless, the Urgent Interim Reparation scheme was able to provide only modest, not to say symbolic, financial compensation, leaving untouched the socio-economic marginalization endured by many victims.[34] Moreover, pursuing compensation to the victims in the framework of reparations under public international law, that is aiming to return victims to their original situation prior to the violation, may inadvertently reinforce conditions of inequality. Restoring the pre-conflict status quo in contexts marked by systemic poverty or discrimination risks not only provide no help for said conditions but

[31] S. GREADY, *The Case for Transformative Reparations: In Pursuit of Structural Socio-Economic Reform in Post-Conflict Societies*, in *Journal of Intervention and Statebuilding*, n. 16 (2), 2022, pp. 182-201.
[32] S. DE VIDO, *In dubio pro futuris generationibus: una risposta giuridica eco-centrica alla slow violence*, *cit.*.
[33] See, among the others, M. FREEMAN, *Bosnia and Herzegovina: Selected Developments in Transitional Justice*, ICTJ Case Study series, October 2004; K. CLARK, *War Reparations and Litigation: the case of Bosnia*, Report of an international meeting held at the Law Faculty of the University of Amsterdam 17-18 April 2014 organized by the Nuhanovic Foundation; A. BEGIČEVIĆ, *Money as Justice: The Case of Bosnia and Herzegovina*, in *Oñati Sociolegal Series*, n. 6(3), 2016, pp. 396-425.
[34] South Africa, Promotion of National Unity and Reconciliation Act 34 of 1995; see also F. HARRISON, *Reparations in South Africa: What still needs to be done?*, Institute for Justice and Reconciliation Policy brief 45, March 2025.

actually strengthening the very social structures that contributed to violence in the first place.[35] While the victims are recognised, no transformation of the root causes of the vulnerability experienced by certain social groups is achieved.

Transformative reparations allow to tackle these limitations and to confront the deeper social, economic, and political dynamics that foster vulnerability and injustice, through a shift from reactive justice to proactive transformation. To this goal, it is necessary that reparations do not follow a previously established pattern, but that they reflect the diversity of victims' experiences and respond to their specific needs, following a case-by-case approach. This calls for a pluralist and participatory approach, in which victims are not treated as passive recipients of state-led policies, but as active agents in the design and even in the implementation of reparations programs, emphasising victim agency, local knowledge, and inclusive participation. Justice is therefore co-produced through dialogic processes between victims, communities, and institutions. Such an approach not only enhances the legitimacy of reparations but also fosters empowerment and social cohesion, and align with broader goals of reconciliation and, more important, structural transformation.[36] Structural transformation can only be understood as collective in orientation. Remedies should benefit communities as a whole rather than focussing on individual solutions. By doing so, it is possible to tackle phenomena such as widespread or identity-based violence, where communal trust has been eroded and where collective healing is necessary.[37]

Examples of post-conflict measures that find a place in a transformative approach to reparations include investments in education, psychosocial support programs, community infrastructure, public memorialisation, and reforms of key sectors such as the judiciary, law enforcement, or land property regimes. Such measures allow to tackle past abuses and to provide justice and at the same time they contribute to the rebuilding of institutions and the prevention of future conflict. Empowering the victims allows them to participate in the reconstruction of their own future, instead of depending on external intervention, for instance from state authorities.[38] This, in turn, makes the individuals more conscient and more willing to participate and to access the decision-making processes also after a new normality will have been established. This is not only a development that benefits the individuals but actually aligns transformative reparations with the broader public international legal obligations of non-repetition of the

[35] R. YEPES, *Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice*, in *Netherlands Quarterly of Human Rights*, n. 27(4), pp. 625–647.
[36] L. LAPLANTE, *Just Repair*, in Cornell International Law Journal, n. 48(3), 2015, pp. 513–578.
[37] S. WEBER, *From Victims and Mothers to Citizens: Gender-Just Transformative Reparations and the Need for Public and Private Transitions*, in *International Journal for Transitional Justice*, n. 12(1), 2018, pp. 88–107.
[38] T. MADLINGOZIM, *On Transitional Justice Entrepreneurs and the Production of Victims*, in *Journal of Human Rights Practice*, n. 2(2), 2010, pp. 208–228.

wrongful act, as well as to the state international commitments stemming from instruments such as the UN Sustainable Development Goals, like equality, environmental sustainability and inclusion.

The increasing role of transformative reparations within the post-conflict legal discourse reflects a maturation and a consolidation of the field of transitional justice. It denotes a shift from reactive frameworks centred on state responsibility and eventual victim monetary compensation, towards a comprehensive legal and moral project that actively shapes the conditions of peace, with a deeper engagement with the root causes of conflict, whether political, economic, environmental, or gender-based, and seek to lay the groundwork for a more just and resilient social contract. This integration is evident in the evolution of the mentioned international legal instruments, namely the UN Basic Principles and Guidelines, which led to the adoption of a more expansive, victim-centred understanding of justice; and the Resolution 1325, which underscores the importance of inclusive, transformative approaches in post-conflict contexts. Transformative reparations thus represent the convergence of transitional justice, sustainable development, and human rights.

Despite the positive aspects presented, putting in place a transformative approach to reparations still faces significant challenges. The implementation of transformative reparations requires not only legal commitment but also political will, sustained funding, and interdisciplinary collaboration. Commitments for transformative reparations are inherently long-term, unlike traditional reparations, which may be implemented through one-time payments or symbolic gestures. In terms of political will, transformative reparations often require governments to acknowledge structural injustice, redistribute resources, and undertake reforms that may threaten entrenched interests. In such contexts, civil society plays a critical role in advocating for inclusive and accountable reparations processes. Moreover, it is necessary to balance the demands of corrective and distributive justice. While individual victims rightly seek recognition and compensation for personal suffering, transformative justice emphasizes structural change and collective benefit. Balancing the two elements can prove to be difficult, particularly when resources are limited and expectations are high. On top of this, highly unequal societies may not possess the necessary technical expertise and the infrastructure for implementing robust participatory mechanisms.[39] Reparations that fail to take into account local power dynamics and social hierarchies risk reinforcing existing inequalities rather than dismantling them.[40]

[39] S. GREADY, *The Case for Transformative Reparations: In Pursuit of Structural Socio-Economic Reform in Post-Conflict Societies*, *cit*.

[40] S. SZOKE-BURKE, *Not Only 'Context': Why Transitional Justice Programs Can No Longer Ignore Violations of Economic and Social Rights*, .in *Texas International Law Journal*, n. 50(3), 2015, pp. 465–494.

4. Transformative Reparations in Ukraine

4.1. Peace Negotiations and Multi-layered Reparations

The situations presented in section 2 have to be address through the lens of the framework introduced in section 3. This is to be done in the peace negotiations, that shall grant not just the end of hostilities but a just peace for the offended State, that is Ukraine, and for the victims of the armed conflict. The war in Ukraine highlights, probably as it has never been done before, the need to incorporate long-term, slowly-developing negative consequences into the framework of international legal theory on responsibility and reparation. While establishing direct causal links is challenging, excluding these consequences from compensation mechanisms would be unsatisfactory. In particular, the negotiations on peace and reparations shall consider the gender dimension of the war and also do it in relation to its intersectionality with the environmental consequences of the armed conflict. As mentioned in section 2, the recognition of the environmental harm caused by armed conflicts has progressively grown, even though often in relation to the direct effects of the armed conflict, while is rarer to notice the indirect, long-term effects. However, the invasion of Ukraine by Russia occurred during a period when the international community, particularly Europe, was intensifying efforts to combat environmental damages and climate change and has shown a particular attention for gender issues. In fact, the intersection of environmental damage with gender disparities further exacerbates the difficulties encountered by vulnerable groups, as displaced women and children may find it challenging to obtain secure living environments in a post-conflict setting characterised by societal disruption and environmental degradation, and may face the invisible, long-term consequences of the war that place an additional burden on vulnerable groups.

In this light, the international community must acknowledge the potential for long-term, slowly developing war damages and consider creating compensatory mechanism the reparations framework to address these long-term effects. As scholarship has been noticing, reparations have to be tackled on two different layers.[41] The starting point remains inter-state reparations under public international law. This has to be complemented by the layer of transformative reparations in order to provide justice for the victims and to tackle the structural inequalities that were exacerbated by the war, leading to situations of increased vulnerability experienced by certain parts of the society, as well the inequalities and the imbalances war created. Both the inter-state dimension and the individual dimension have to be addressed in the comprehensive peace settlement. The inter-state dimension is functional to the individual dimension, to the extent that the compensation requested to the aggressor should include the funds

[41] On the topic see E. CALVET-MARTINEZ, *Transitional Justice in the Context of the War in Ukraine*, in *Revue Europenne de Droit*, n. 5 (4), 2023, p. 76-82.

necessary to implement the measures allowing for transformative reparations. The UN Principles against Impunity affirm that any human rights violation gives rise to a right to reparation for the victim or their beneficiaries,[42] thus in this light the State that is responsible for the violations has the duty to provide reparation not only for material damages caused during the war but also for the non-material damages caused by violations of human rights. Transformative reparations are extremely costly, and when there are no adequate resources to fund them, they risk falling short of expectations and generating dissatisfaction.[43] Conversely, when sufficient financial means are allocated, they have proven effective in contributing to the goal of a more just and reconciled society.[44] This requires a shift in the paradigm that has traditionally governed post-war relations among individual victims, the offended State, that is Ukraine, and the responsible State, that is the Russian Federation. These relationships must now be reframed through the lens of the victims and their fundamental right to justice. Rather than focusing solely on state-to-state accountability, the post-conflict framework should prioritise the lived experiences and needs of those most affected by the war. This victim-centred approach is firmly rooted in international law and is enshrined in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, which seek to codify and reaffirm human rights protections from the perspective of those who have suffered harm.[45] It reflects a broader evolution in transitional justice, where reparative measures are no longer merely symbolic or diplomatic but serve as essential tools to restore dignity, agency, and trust among victims and affected communities.

4.1.1. Reparations in the Framework of State Responsibility

Drawing on the obligation for the wrongdoer to make full reparation for the injury caused, both at material and moral levels,[46] the Russian Federation will have to be obligated to pay reparations to Ukraine. Russia's invasion of Ukraine is in fact a blatant breach of the UN Charter's prohibition on the use of force and constitutes not only a violation of Ukraine's rights but a threat to the entire international legal order.[47]

The mechanism for securing reparations from the responsible State will be object of peace negotiations, with at least two possible routes that could be explored.[48] The first is the traditional inter-state claim,

[42] Set of principles for the protection and promotion of human rights through action to combat impunity, *cit.*.
[43] B. MCGONIGLE LEYH, J. FRASER, *Transformative Reparations: Changing the Game or More of the Same?*, in *Cambridge International Law Journal*, n. 8(1), 2019, pp. 39–59.
[44] A. GUARIN, J. LONDOÑO-VÉLEZ, C. POSSO, *Reparations as Development? Evidence from Victims of the Colombian Armed Conflict* (World Bank Research); Global Survivors Fund, *Financing Reparations: Debunking the Myths*, 2025.
[45] Basic Principles and Guidelines, *cit.*
[46] Art. 31 and 34 ARSIWA.
[47] *Supra* note 2.
[48] E. CALVET-MARTINEZ, *Transitional Justice in the Context of the War in Ukraine*, *cit.*.

before the ICJ, a path that has been successfully attempted for instance in the Democratic Republic of Congo v Uganda case.[49] In that case, the ICJ awarded the Democratic Republic of the Congo USD 325 million in damages: USD 225 million for damage to persons, USD 40 million for damage to property, and USD 60 million for damage to natural resources.[50] In this regard, Ukraine has already brought a case against Russia to the ICJ under the 1948 Genocide Convention, seeking provisional measures to stop the military aggression.[51] Nonetheless, Russia objected on the ICJ jurisdiction,[52] and moreover this type of proceedings could take years. While this legal strategy could lead to reparations in the future the tangible outcomes for victims are very limited and often fall short of addressing the real needs of victims, as they tend to operate at a high diplomatic level, leaving individuals behind.[53] An additional hurdle is that of the practical enforcement of a favourable judgement: even if the ICJ rules in favour of Ukraine and awards monetary compensation for damage to persons, property, or natural resources, getting Russia to pay is far from straightforward due to complex legal and political barriers, and the lack of will of the Russian Federation to pay for the damages.[54]

A second approach, opened theoretically for individual claims, is that of the establishment of a tailored claims tribunal, inspired by the historical examples of the Iran-U.S. Claims Tribunal,[55] or the UN Compensation Commission established after the 1991 Gulf War.[56] A potential Ukraine-Russia Claims Tribunal, could work as an *ad hoc* arbitral tribunal designed to resolve large-scale violations of international law, but also to hear individual claims. Based on the experience of the mentioned claims tribunals, the Ukraine-Russia Claims Tribunal would nonetheless work within the framework of public international law and would likely address only direct damages directly attributable to the war, ignoring the invisible effects of the war mentioned in section 2. Still, as for the ICJ path, a significative hurdle would be that of getting the actual payments from the Russian Federation, even if in this case the will to establish an *ad hoc* mechanism would at least suggest that the country is open to pay reparations for the damage caused. To secure the financial resources required to fund potential transformative reparations, one possible alternative to the current lack of political will to provide compensation could be the use of frozen Russian

[49] ICJ, *Democratic Republic of the Congo v. Uganda (Armed Activities)*, Decision of reparations of 9 February 2022.
[50] Ibid, § 409.
[51] ICJ, *Ukraine v. Russian Federation (Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide)*, 2022 General List No. 182.
[52] ICJ, *Ukraine v. Russian Federation (Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide)*, *ibid.*, Document (with annexes) from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case of 7 March 2022.
[53] E. CALVET-MARTINEZ, *Transitional Justice in the Context of the War in Ukraine*, *cit.*.
[54] See, among the others, A. TANZI, *Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations*, in *European Journal of International Law*, n. 6, 1995, pp. 539-572.
[55] Iran-United States Claim Tribunal.
[56] UN Security Council Resolution 692 (1991) of 20 May 1991, S/RES/692.

assets.[57] While this solution offers a pragmatic path forward, it raises complex legal questions, particularly concerning State immunity, property rights, and due process.[58] In particular, the doctrine of State immunity, encompassing both jurisdictional immunity (which shields States from being sued before foreign courts) and enforcement immunity (which protects State property from seizure or execution), constitutes a significant legal obstacle to the repurposing of frozen sovereign assets. Under customary international law, enforcement immunity is especially robust, permitting measures against State property only in narrowly defined circumstances, such as where the State has expressly consented or where the property is used for commercial, rather than sovereign, purposes.[59] However, such concerns could potentially be mitigated if the use of these assets were authorised pursuant to a favourable decision by a competent international judicial body, or with direct involvement of the United Nations, thereby grounding the measure in international law and enhancing its legitimacy. [60]

4.1.2 A Victim-Focused Approach to Reparations

The second level to tackle the reparations requires putting the victims at the centre and follow a transformative approach to reparations.[61] Following the UN Basic Principles and Guidelines, full and effective reparations should go beyond just monetary compensation and include rehabilitation, satisfaction, and guarantees of non-repetition.[62] This cannot be achieved separately from the inter-state layer, and collective reparations that are inclusive, culturally and intersectionally sensitive, could be more effective than individual remedies. The most straightforward solution is to connect individual reparation to the inter-state level, empowering the already mentioned, potential Ukraine-Russia Claims Commission to hear individual claims, similar to the UN Compensation Commission after the Gulf War, which was funded by a share of Iraqi oil exports.[63] Nonetheless, the limitations of this mechanism for less obvious

[57] European Union estimates indicate that approximately USD 300 billion in Russian sovereign assets have been frozen.
[58] See, among the others, V. ZAMBRANO, *Stati e vittime. Tra immunità dei beni statali dall'esecuzione e obbligo di riparazione per gravi violazioni dei diritti umani e del diritto umanitario*, Napoli, Editoriale Scientifica, 2025.
[59] See, *inter alia*, United Nations Convention on Jurisdictional Immunities of States and Their Property, Adopted by the General Assembly of the United Nations on 2 December 2004, not yet in force, A/59/49; ICJ, *Jurisdictional Immunities of the State (Germany v. Italy)*, Judgment of 3 February 2012, §113-120. See also F. MARRELLA, *Diritto internazionale*, Milan, Giuffrè Francis Lefebvre, 2023, pp. 460-497.
[60] On the frozen assets see *Memorandum On Proposed Countermeasures Against Russia to Compensate Injured States for Losses Caused by Russia's War of Aggression Against Ukraine* of 23 November 2023 and the Open letter by international lawyers and practitioners; M.T. KAMMINGA, *Confiscating Russia's Frozen Central Bank Assets: A Permissible Third-Party Countermeasures?*, in *Netherlands International Law Review*, n. 70(1), 2023, pp. 1-17; .; O. HATHAWAY, M. MILLS, T. POSTON, *War Reparations: The Case for Countermeasures*, in *Stanford Law Review*, n. 76, 2024, pp. 971-1050; G. ADINOLFI, M. SOSSAI, *Immobilizzazione, congelamento e confisca dei beni russi a favore dell'Ucraina alla luce del diritto internazionale*, in *Rivista di diritto internazionale*, n. 107(3), 2024, pp. 687-739; A. MOISEIENKO, Frozen Russian State Assets: The Key to Enforcing the Largest Financial Debt of Our Times, in *Verfassungsblog*,, 4 April 2025.
[61] E. CALVET-MARTINEZ, *Transitional Justice in the Context of the War in Ukraine*, *cit.*.
[62] Basic Principles and Guidelines, *cit.*
[63] UN Security Council Resolution 692 (1991) of 20 May 1991, S/RES/692.

(and harder to assess) violations have been presented in the previous section. The feasibility of establishing international mechanisms similar to the UN Compensation Commission is undermined by the veto power Russia has in the UN Security Council. Other UN bodies, such as the General Assembly, may need to take the lead—even if the outcomes of such initiatives remain uncertain. The first notable attempt by the General Assembly to circumvent inaction by the Security Council was the adoption of Resolution 377(A), commonly known as "Uniting for Peace." However, the impact of such measures has been subject to debate and has, in practice, remained limited in terms of tangible effects.[64]

On the other side, action can be taken at domestic level. While many domestic systems are ill-equipped to deliver these forms of justice on their own to the victims of a war, an effort is required by the offended State, Ukraine, that should establish a national reparations program, ideally backed by Russian funds obtain as inter-state compensation, eventually complemented by funds provided by international donors. In fact, the currently frozen Russian assets do not cover the estimated costs of reparations (USD 524 billion), making the voluntary involvement of third parties essential to bridge the financial gap.[65] Something similar has been recently done following the civil war in Sudan, where the 2020 Peace Agreement established the creation of a Reparations Fund for Darfur.[66] The priority in the allocation of the resources should go to those most affected by the war, for instance physically affected persons, refugees and displaced persons, by helping them return home and reclaim lost property and to start a new life in their country of origin.[67] Currently, the Council of Europe is supporting Ukraine in collecting claims from individuals through the platform Register Damage for Ukraine, in light of future proceedings.[68]

Regardless of the means of compensation for the victims, a true transformative approach to reparations should also ensure that violations will not happen again, that is should entail guarantees of non-repetition.[69] These are one of the key elements of reparations in cases of armed conflict and human rights abuses, where the responsible State is be required to offer these assurances.[70] Such assurances are not mere means of satisfaction, but actual legal obligations aimed at rebuilding trust at all levels: first of all,

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[64] See A. KLECZKOWSKA, *Resolution 377 "Uniting for Peace" The United Nations General Assembly powers and the prohibition of the use of force*, in K. KOWALIK-BAŃCZYK, K. WIERCZYŃSKA, A. JAKUBOWSKI (eds.), *Euphony, Harmony and Dissonance in the International Legal Order*, Warsaw, ILS PAS, Warsaw 2024

[65] The WB, the Government of Ukraine, the EU and the UN estimates indicate that approximately 524 billion are necessary for total recovery and reconstruction..

[66] Ch. 4 §12 of the Juba Agreement, 9 March 2020.

[67] See, for instance, the proposal of an urgent interim reparations scheme developed by Yulia Ioffe, in Y. IOFFE, *Urgent Interim Reparations in Ukraine: Addressing Conflict-Related Sexual Violence*, in J. GIBLIN, P. BUTCHARD, O. CHUB, O. SENATOROVA, (eds.) *Developments in International Law Triggered by the Russia-Ukraine War*, London, Routledge, forthcoming.

[68] Council of Europe, Register Damage for Ukraine, Platform RD4U.

[69] E. CALVET-MARTINEZ, *Transitional Justice in the Context of the War in Ukraine*, *cit.*.

[70] Art. 30 ARSIWA.

within society, and, if possible, between States. The latter would certainly be complicated, and almost an impossible process, provided that Russia had already violated Ukraine's sovereignty in 2014 with the annexation of Crimea and had long fuelled conflict in the Donbas, not to mention that Russia's aggression has also raised serious concerns about the security and territorial integrity of other neighbouring countries. In particular, both Moldova and Georgia have already experienced direct and indirect forms of Russian interference, including the support of separatist movements and military presence in breakaway regions.[71] These ongoing threats underscore a broader pattern of regional destabilisation that seriously undermines confidence in any future guarantees of non-repetition.

In parallel to the guarantees of non-repetition by the aggressor State, trust within society can be progressively rebuilt through institutional reforms that place the rule of law at the centre of post-conflict reconstruction. This includes the establishment of effective civilian oversight mechanisms over the military and security forces, as well as the systematic training of these actors in human rights and international humanitarian law.[72] Such reforms are essential not only to prevent future abuses but also to restore public confidence in State institutions. All the measures aimed at restoring trust must be inclusive and responsive to the needs of victims, particularly those who have borne the heaviest and often invisible burden of the conflict, such as women, children, displaced persons, and other vulnerable or marginalised groups. Ensuring their participation and addressing their specific experiences is crucial to fostering a genuinely transformative and sustainable peace.

After all, the measures that will be introduced in the transformative reparations package of the peace agreement, would go for the benefit of Ukraine and Ukrainian society first, but also uphold the international legal order, stressing that the international society cannot tolerate acts of aggression as the one the Russian Federation carries out since 2014. What represents a Damocles' sword on the table is what kind of commitments Russia could realistically make right now, especially given the deep mistrust between the two countries based on a number of betrayals of past commitments by Russia, not last the 2025 Easter truce which was unilaterally declared by Russia and allegedly violated a number of times by both sides.[73]

[71] See, for instance, ECtHR, *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, 8 July 2004, §386-394; ECtHR, *Georgia c. Russia (II)* [GC], no. 38263/08, 21 January 2021, §174.
[72] E. CALVET-MARTINEZ, *Transitional Justice in the Context of the War in Ukraine*, *cit.*.
[73] See for instance A. BAUNOV, *Putin's Unilateral Easter Truce Was Never Intended to Last*, in *Carnegie Russia Eurasia Center*, 23 April 2025.

5. Conclusion

Ukraine's post-war reconstruction presents a critical and unprecedented opportunity to reshape the architecture of reparative justice. More than a process of rebuilding, it offers the possibility of transformation, of addressing not only the tangible devastation of infrastructure and lives, but also the less visible and slower-unfolding harms inflicted on the environment, public health, and deeply embedded social structures. A transformative approach to reparations, grounded in international law and responsive to contemporary challenges, can serve as a model for more inclusive, resilient, and equitable post-conflict recovery.

Central to this vision is the integration of gender and environmental perspectives into the design and implementation of reparations. Recognising women's roles in peacebuilding, ensuring their participation in decision-making, and confronting structural gender inequalities must be understood as core elements of justice, not peripheral concerns. Likewise, environmental degradation, often dispersed across time and space, and disproportionately affecting vulnerable populations, demands legal recognition not just as collateral damage, but as a prosecutable and reparable category of harm.

The reparations framework proposed in this paper calls for addressing the long-term, slowly-developing consequences of the war within dual-layered approach to reparations: one that combines inter-state legal obligations with transformative, victim-centred mechanisms capable of addressing structural injustices and empowering affected communities. This approach not only aligns with emerging international legal standards but also reflects a maturing conception of justice that goes beyond restoration to encompass accountability, participation, and non-repetition.

Implementing such a vision is not without challenges. It requires legal innovation, political will, sustained funding, and the mobilisation of international and domestic institutions. Yet, the alternative, that is reverting to narrow, State-centric, and short-term models of reparation, risks perpetuating the very conditions that made the conflict so destructive in the first place.

Ukraine's recovery, therefore, should not be seen solely as a national concern, but as a global legal moment: a test case for integrating environmental and gender justice into the heart of post-conflict reconstruction. In doing so, it can chart a path for future legal frameworks that seek not merely to rebuild after war, but to renew the foundations of peace.

The Unsatisfactory Experiences of Women in Rwanda as an Argument in Favour of Transformative Reparations for Victims of Gender-based Violence *

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Abstract [En]: The innovation brought by the International Criminal Tribunal for Rwanda to the recognition of gender-based crimes committed against women during the genocide in Rwanda was counterbalanced, unfortunately, by its many shortcomings when it came to reparations for the victims. Moreover, not even the reparations schemes provided by Rwandan domestic law were fully satisfactory for women, who also suffered for the economic and social repercussions of the genocide. Thus, the aim of this work is to analyse the unsatisfactory experience of Rwandan women, in order to underline how, when it comes to gender-based violence, reparations should aim to address and overcome the political and structural inequalities that negatively shape women's lives.

Abstract [It]: L'innovazione che il Tribunale penale internazionale per il Ruanda ha apportato al riconoscimento dei reati di genere, commessi contro le donne durante il genocidio, è stata controbilanciata, purtroppo, dalle sue numerose carenze riguardo al risarcimento delle vittime. In aggiunta, nemmeno i modelli di riparazione previsti dal diritto interno ruandese sono stati pienamente soddisfacenti per le donne, le quali hanno sofferto anche per le ripercussioni economiche e sociali derivanti dal genocidio. Questo lavoro, pertanto, mira ad analizzare l'esperienza insoddisfacente delle donne ruandesi, al fine di evidenziare come le riparazioni nei casi di violenza di genere dovrebbero tendere ad affrontare e superare le disuguaglianze politiche e strutturali che influenzano negativamente la vita delle donne.

Keywords: reparations; gender-based crimes; International Criminal Tribunal for Rwanda; Gacaca courts; transformative approach.
Parole chiave: riparazioni; reati di genere; Tribunale penale internazionale per il Ruanda; corti Gacaca; approccio trasformativo.

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1. Introduction

It has been estimated that during the 1994 Rwandan genocide, when nearly 1 million Tutsis and moderate Hutus were killed by Hutu extremists, approximately between 250,000 and 500,000 women were raped[1],

* Peer reviewed.
[1] UN Economic and Social Council, Commission on Human Rights, *Report on the Situation of Human Rights in Rwanda Submitted by Mr René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, UN Doc. E/CN.4/1996/68, 29 January 1996, para. 16.

with many of them dying as a consequence of severe injuries or of sexually transmitted diseases, like the HIV/AIDS. Although the exact number of raped women is difficult to quantify, it has been suggested that "almost all females who survived the genocide were direct victims of rape or other sexual violence, or were profoundly affected by it"[2].

The International Criminal Tribunal for Rwanda [ICTR] was the first international tribunal to consider rape and other forms of sexual violence against women as one the material acts that could constitute genocide, in the *Akayesu*[3] case. Such case was also the first conviction ever of an individual for rape as a crime against humanity. However, the innovation brought by the Tribunal to the recognition of sexual and gender-based crimes[4] committed against the women during the genocide in Rwanda was counterbalanced by its many shortcomings when it came to reparations for the victims. Indeed, until the adoption of the Rome Statute[5] of the International Criminal Court [ICC], the rights of victims in international criminal law were fairly marginalised as they were considered relevant mainly in their role as witnesses.

In addition, in the case of Rwanda, not even the reparations schemes provided by domestic law were fully satisfactory, in particular for the women, who not only were directly targeted through gender-based violence, but also suffered for the economic and social repercussions of the genocide. It has been suggested, in fact, that when it comes to reparations "female survivors of sexual violence […] deserve separate attention"[6] as, in addition to the more apparent consequences such as physical damages like mutilations, lesions and scarring as well as sexually transmitted diseases, they may also face psychological trauma, social stigmatisation and conditions of extreme poverty[7]. Moreover, sexual violences may often

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The 2009 study by C. BIJLEVELD, A. MORSSINKHOF, A. SMEULERS, *Counting the Countless – Rape Victimisation during the Rwandan Genocide*, in *International Criminal Justice Review*, vol. 19, 2009, pp. 208-224 estimated the number to be at least 350,000 women.

[2] Organization of African Unity, International Panel of Eminent Personalities Report, *Rwanda: The Preventable Genocide*, 7 July 2000, para. 16.20.

[3] ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Judgement, Trial Chamber I, ICTR-96-4-T, 2 September 1998, paras. 706-707.

[4] On this aspect see, among others: A.M. DE BROUWER, U. KAITESI, *Sexual Violence*, in A.M. DE BROUWER, A. SMEULERS (eds.), *The Elgar Companion to the International Criminal Tribunal for Rwanda*, Edward Elgar Publishing, Cheltenham and Northampton, 2016, p. 171 ff.; A. ADAMS, *The Legacy of the International Criminal Tribunals for the Former Yugoslavia and Rwanda and Their Contribution to the Crime of Rape*, in *European Journal of International Law*, vol. 29, 2018, pp. 749-769; A. OBOTE-ODORA, *Rape and Sexual Violence in International Law: ICTR Contribution*, in *New England Journal of International and Comparative Law*, vol. 12, 2005, pp. 135-160.

[5] *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, entered into force on 1 July 2002, art. 75, para. 2 expressively states: "The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79".

[6] A.M. DE BROUWER, *Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families*, in *Leiden Journal of International Law*, vol. 20, 2007, pp. 207-237, p. 209.

[7] *Ibid.*, p. 208.

result in unwanted pregnancies. Thus, women, in addition to dealing with their own problems, are also faced with "their children's most basic needs, such as food, clothing, housing, and education"[8].

Therefore, this work will analyse the unsatisfactory experiences of women in Rwanda, first describing the shortcomings of the ICTR on matter of reparations, and then the inadequate experience of the domestic reparations schemes, in order to underline, in conclusion, what reparations programmes for women in post-conflict situations should really strive for. As will be better discussed in the last paragraph, in fact, reparations for women victims of gender-based violence should follow a transformative approach. This means that they should have as the ultimate goal the transformation of post-conflict societies through the elimination of the socio-cultural injustices and the political and structural inequalities, that usually constitute the origins of the violations of women's and girls' human rights. Indeed, in many cases throughout the world, the extreme violence suffered by women during conflicts does not stem exclusively from the conditions of war, but is directly linked to the violence that exists in their lives even in peacetime, given that they experience violence simply because they are women and they often do not have the same rights or autonomy that men do[9].

2. The Shortcomings of the ICTR

In 1994, one year after the creation of the first international criminal tribunal, that is the International Criminal Tribunal for the former Yugoslavia[10] [ICTY], the UN Security Council decided, due to the barbaric massacres of the Tutsi population (as well as moderate Hutus) in Rwanda, to create an additional judicial organ, the ICTR, with the aim of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda between 1 January 1994 and 31 December 1994[11]. The ICTR began to operate in 1995 and officially closed in December 2015, with its work now being taken over by the International Residual Mechanism for Criminal Tribunals which was established in 2010 in order to carry out the essential functions of the ICTR and the ICTY (which closed in 2017).

However, up to the date of its last judgment the ICTR has never applied any provision regarding victims' reparations[12]. This was due to the fact that, as anticipated above, in both Statutes of the two *ad hoc*

[8] *Ibid.*, p. 211.
[9] E. REHN, E.J. SIRLEAF, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, United Nations Development Fund for Women (UNIFEM), New York, 2002, p. 13.
[10] UN Security Council, Resolution 827 (1993) adopted by the Security Council at its 3217th meeting, UN Doc. S/RES/827(1993), 25 May 1993.
[11] UN Security Council, Resolution 955 (1994) adopted by the Security Council at its 3453rd meeting, UN Doc. S/RES/955(1994), 8 November 1994.
[12] F.X. NSANZUWERA, *Contribution of the ICTR for Rwandans*, in A.M. DE BROUWER, A. SMEULERS (eds.), *The Elgar Companion to the International Criminal Tribunal for Rwanda*, *op. cit.*, p. 500.

International Criminal Tribunals the role of victims was greatly marginalised, to the point that, as noted by former ICTY President Claude Jorda, the procedure of the two Tribunals reduced the victims "to nothing more than the 'object-matter' of international criminal proceedings"[13].

Moreover, both Statutes contained no explicit reference to reparations apart from restitution. In fact, both Article 23 of the Statute of the ICTR and the corresponding Article 24 of that of the ICTY only maintained that "[i]n addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners"[14].

According to Rule 105[15] of the Rules of Procedure and Evidence [RPE] common to both Tribunals, after a judgment of conviction[16], the matter of restitution had to be determined only at the request of the Prosecutor or on the Trial Chamber's own initiative. It thus excluded that a request for restitution could be initiated by the victims themselves. Moreover, Rule 106 of the RPE of both Tribunals provided that if the victims or their beneficiaries wanted to claim compensation for the injury suffered, they could have only brought an action before a national court or other competent body pursuant to the relevant national legislation[17]. For such a claim they could have relied on the judgments of the Tribunals, which was "final and binding as to the criminal responsibility of the convicted perpetrator"[18] for the injury caused.

However, as has been noted, this rule was inadequate on various grounds. Firstly, because in this way victimhood would be "conditioned on the guilty conviction of the accused of the crime that has caused harm to a victim"[19], in blatant contrast with the 1985 UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* according to which a person may be considered a victim "regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim"[20]. Furthermore, because it allocated the determination of compensation claims to domestic legislation, while the right to a remedy, as an international recognised norm, should not have been relegated only to national courts[21].

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[13] C. JORDA, J. HEMPTINNE, *The Status and Role of the Victim*, in A. CASSESE, P. GAETA, J. JONES (eds), *The Rome Statute of The International Criminal Court*, Oxford University Press, Oxford, 2002, p. 1389.

[14] UN Security Council, *Statute of the International Criminal Tribunal for Rwanda (as last amended on 31 January 2010)*, adopted on 8 November 1994, art. 23; UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 7 July 2009)*, adopted on 25 May 1993, art. 24.

[15] International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda, Rules of Procedure and Evidence [REP], as amended 2015, Rule 105.

[16] When "the Trial Chamber finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it" under, respectively, ICTY REP, Rule 98 ter, lit. b and ICTR REP, Rule 88, lit. b.

[17] ICTY and ICTR, REP, Rule 106, lit. b.

[18] *Ibid.*, lit. c.

[19] R. MUZIGO-MORRISON, *The rights of victims*, in A.M. DE BROUWER, A. SMEULERS (eds.), *The Elgar Companion to the International Criminal Tribunal for Rwanda*, *op. cit.*, p. 420.

[20] UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN Doc. A/RES/40/34, 29 November 1985, principle 2.

[21] R. MUZIGO-MORRISON, *The rights of victims*, *op. cit.*, p. 420.

This system has been explained as deriving from the fact that "at the time when the Statutes of the *ad hoc* Tribunals were being drawn up, the Security Council […] was more concerned to punish criminal acts perpetrated in Rwanda and the former Yugoslavia than to satisfy the personal interests of the victims"[22]. Indeed, according to Morris and Scharf[23], who examined the *travaux préparatoires* of the ICTY[24], one of the arguments used to justify the exclusion of reparations provisions was the wording of Security Council Resolution 827 of 1993, which established the Tribunal "for the sole purpose of prosecuting persons responsible for serious violations"[25], thus leaving no space for additional purposes[26], as "there was no indication that the Security Council intended this tribunal to deal with questions of victim compensation"[27].

Another reason for the adoption of a system that considers victims primarily as witnesses and not as rightsholders could be found in the fact that the procedure adopted by the Tribunals is greatly influenced by and owes much to "the adversarial model found in Anglo-American jurisdictions"[28], where "the victim's role is merely to appear as a witness for one of the parties to the proceedings"[29], without the chance to claim reparation for damage or harm.

This choice was strongly criticised by the first President of the ICTY, Judge Antonio Cassese, who noted that during the drafting of the provisions on restitution and compensation of the RPE many judges were outraged by what he defined a "sort of capitalist approach"[30]. In fact, under such a system, a person who, in connection with one of the crimes under the Tribunals' jurisdiction, was victim of a property theft (be it a house, money or even an art collection), was entitled to restitution, whereas survivors of genocide or victims of torture or rape could not even claim any compensation for the harm suffered[31], thus contributing "to create an undue hierarchy of victimization"[32]. In particular, according to Cassese, the judges from civil law countries felt "that this Anglo-American procedure, the adversarial system, in a way

[22] C. JORDA, J. HEMPTINNE, *The Status and Role of the Victim*, *op. cit.*, p. 1391.
[23] V. MORRIS, M. SCHARF, *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia: Documentary History and Analysis*, vol.1, Transnational Publishers, New York, 1995, pp. 286-287.
[24] Which constituted the basis for the ICTR and for this reason they are here discussed together.
[25] UN Security Council, Resolution 827 (1993), *cit.*
[26] C. SPERFELDT, *Practices of Reparations in International Criminal Justice*, Cambridge University Press, Cambridge, 2002, p. 48.
[27] V. MORRIS, M. SCHARF, *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia*, *op. cit.*, p. 286.
[28] C. JORDA, J. HEMPTINNE, *The Status and Role of the Victim*, *op. cit.*, p. 1391.
[29] *Ibid.*
[30] A. CASSESE's words are taken from the public discussion that took place during a conference in Berlin in 1997 and which was entirely transcribed in the book resulting from that conference: *Discussion (Part 1)*, in A. RANDELZHOFER, C. TOMUSCHAT (eds.), *State Responsibility and the Individual: Reparation in Instances of Grave Violations of Human Rights*, Martinus Nijhoff Publishers, The Hague, 1999, p. 48.
[31] *Ibid.*; see also a similar view suggesting the unfairness and potential discrimination of this system in I. BOTTIGLIERO, *Redress for Victims of Crimes Under International Law*, Springer, Dordrecht, 2004, p. 202.
[32] M. COHEN, *Realizing Reparative Justice for International Crimes: From Theory to Practice*, Cambridge University Press, Cambridge, 2020, p. 59.

tends to neglect the victim"[33]. Indeed, while in America civil proceedings take place only after criminal proceedings, "in Europe they can be combined with [the so-called] '*constitution de partie civile*' and this lends a role, a major role, and a voice to the victim"[34].

As noted by former ICTY and ICTR Prosecutor Carla Del Ponte, in fact, "[a] system of criminal law that does not take into account the victims of crimes is fundamentally lacking"[35]. This procedure does not consider the fact that reparation "is an indispensable element of the restoration of social harmony between communities which, in some cases, have been at war with each other for several years"[36] and that it constitutes "a *sine qua non* for the establishment of a deep-rooted and lasting peace"[37].

Although, international criminal law "developed at a time when the position of individuals who suffered harm as a result of violations of international law was very limited within the international legal system"[38], it should be noted that when the ICTY's and the corresponding ICTR's Statutes were negotiated, *Special Rapporteur* Theo van Boven had just published the first draft of his study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms[39], which was later revised and re-elaborated to form what are now the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law*[40]. However, this hallmark achievement did not have any impact on the *ad hoc* Tribunals[41].

In particular, the 1993 study by van Boven was the first step in officially considering victim's issues as specific rights and not just a moral obligation owed to them by the international community[42], addressing "the vulnerability of the victims and how their psychological, emotional and physical state may make it difficult for them to come forward to assert their rights"[43]. Indeed, the most important aspect of the resulting *Basic Principles and Guidelines on the Right to a Remedy and Reparation* is that they have been

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33 A. CASSESE in *Discussion (Part 1)*, *op. cit.*, p. 49.
34 *Ibid.*
35 C. DEL PONTE, *Compensating Victims with Guilty Money*, interview with Carla del Ponte, in *Judicial Diplomacy: Chronicles and Reports on International Criminal Justice*, The Hague, 9 June 2000, quoted in I. BOTTIGLIERO, *Redress for Victims of Crimes*, *op. cit.*, p. 203.
36 C. JORDA, J. HEMPTINNE, *The Status and Role of the Victim*, *op. cit.*, p. 1394.
37 *Ibid.*, p. 1398.
38 C. MCCARTHY, *Reparations and Victim Support in the International Criminal Court*, Cambridge University Press, Cambridge, 2012, p. 37.
39 UN Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report submitted by Special Rapporteur Van Boven,* UN Doc. E/CN.4/Sub.2/1993/8, 2 July 1993.
40 UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. A/RES/60/147, 16 December 2005.
41 C. SPERFELDT, *Practices of Reparations in International Criminal Justice*, *op. cit.*, p. 48.
42 R. MUZIGO-MORRISON, *The rights of victims*, *op. cit.*, p. 390.
43 *Ibid.*

"systematized according to the needs and rights of the victims"[44], as they "are meant to serve as a tool, a guiding instrument for states in devising and implementing victim-oriented policies and programmes"[45]. It follows that the two *ad hoc* International Criminal Tribunals missed a great opportunity as their Statutes and RPE ought to have reflected this study's findings[46].

It is true that there have been attempts to modify the mandates of the Tribunals in light of the rising trend in international law of recognising the victim's rights to reparation. However, ultimately no measures have been adopted.

The discussions were prompted by two proposals put forward by the Prosecutor of the two Tribunals, who hoped to use the funds seized from the accused persons to compensate the victims. The issue was addressed in the letters[47] sent to the UN Secretary-General by the Presidents of both the ICTY and ICTR, which recognised the importance of victims' compensation but concluded that such measures, in the end, should not rest upon the Tribunals as "substantial procedural and logistical difficulties would be presented by the creation of a compensation procedure"[48]. As a solution, the report of the ICTY suggested the creation of a specific body operating as an international compensation commission, while that of the ICTR suggested a trust fund for the victims[49].

In particular, the President of the ICTR, Judge Navanethem Pillay, held the view that adding litigating issues of reparations for victims "would severely hamper the everyday work of the Tribunal and would be highly destructive to the principal mandate of the Tribunal"[50], which was the prosecution of those responsible for the crimes over which it had jurisdiction[51].

Therefore, after the conclusion of these discussions, the idea of a broader victim redress regime in the context of the *ad hoc* International Criminal Tribunals was abandoned[52] due to practical considerations like, *inter alia*, the impact of reparations claims on the tribunal's daily work, the possibility of causing delays in the accused's trial and the costs related to implementing reparation awards[53], overlooking the

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[44] UN Economic and Social Council, *Report of the Third Consultative Meeting on the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law"*, UN Doc. E/CN.4/2005/59, 21 December 2004, para. 9.

[45] T. VAN BOVEN, *Victims' Rights to a Remedy and Reparation: The United Nations Principles and Guidelines*, in C. FERSTMAN, M. GOETZ (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making (2nd ed.)*, Brill Nijhoff, Leiden and Boston, 2020, p. 29.

[46] R. MUZIGO-MORRISON, *The rights of victims*, *op. cit.*, p. 390.

[47] UN Security Council, *Letter dated 2 November 2000 from the Secretary-General to the President of the Security Council*, UN Doc. S/2000/1063, 3 November 2000; UN Security Council, *Letter dated 14 December 2000 from the Secretary-General to the President of the Security Council*, UN Doc. S/2000/1198, 15 December 2000.

[48] C. MCCARTHY, *Reparations and Victim Support in the International Criminal Court*, *op. cit.*, p. 47.

[49] UN Security Council, UN Doc. S/2000/1063, *cit.*; Security Council, UN Doc. S/2000/1198, *cit.*

[50] UN Security Council, UN Doc. S/2000/1198, *cit.*

[51] *Ibid.*

[52] C. MCCARTHY, *Reparations and Victim Support in the International Criminal Court*, *op. cit.*, p. 47.

[53] M. COHEN, *Realizing Reparative Justice for International Crimes*, *op. cit.*, p. 58.

fact that leaving reparation matters to domestic jurisdictions could have wound up providing little or no reparations at all for victims[54].

It should be noted, however, that, in spite of the shortcomings described so far, the ICTR at least made some progress for some survivors of sexual violence in terms of rehabilitation, which can be defined as "the process of restoring the individual's health […] after a serious attack on physical or mental integrity"[55] and consists in a series of measures that include medical and psychological care.

In fact, in 1998, Rule 34 of the ICTR's RPE was amended to extend the mandate of the Victims and Witnesses Support Unit to ensure that "they receive relevant support, including physical and psychological rehabilitation, especially counselling in cases of rape and sexual assault"[56].

Moreover, in 2004 a medical unit was set up to monitor patients and provide rape victims who appeared as witnesses with medical services, including the antiretroviral treatment for those who contracted the HIV, during the trials and in some cases even after[57]. While the initiative was certainly praiseworthy, it was also limited only to victims who testified before the Tribunal, thus excluding the vast majority of women who were subjected to sexual violence and remained dependent only on private and humanitarian initiatives[58].

Furthermore, it has been noted that these measures of medical assistance were established only many years after the creation of the ICTR and mainly as a consequence of the criticism received due to the fact that medical assistance has instead been granted from the beginning to the accused[59].

In conclusion, the overall attention given to victims' rights before the *ad hoc* Tribunals has been inadequate and focused mainly on measures of immediate protection for witnesses, rather than on more long-term considerations like the right to reparations[60].

Nevertheless, despite their flaws and shortcomings, the experience of the ICTR and the ICTY proved to be fundamental for the construction of "a concept of justice for serious violations that recognises victims' rights"[61]. In fact, during the negotiations for the drafting of the ICC's Rules of Procedure and Evidence, constant reference was made to the inadequacies of the ICTR and the ICTY's RPE, in order to ensure that the same errors would not be repeated, given that, as noted for example by the Colombian delegation,

[54] *Ibid.*
[55] D. SHELTON, *Remedies in International Human Rights Law*, 3rd ed., Oxford University Press, Oxford, 2015, p. 394.
[56] ICTR, RPE, Rule 34, para. A (ii).
[57] A.M. DE BROUWER, *Reparation to Victims of Sexual Violence*, *op. cit.*, p. 216.
[58] *Ibid.*, p. 218.
[59] C. EVANS, *The Right to Reparation in International Law for Armed Conflicts*, Cambridge University Press, Cambridge, 2012, p. 95.
[60] *Ibid.*, p. 98.
[61] *Ibid.*

in the ICTR and ICTY proceedings "the victim was an uninvited guest, a spectator, and this exacerbated the conflict"[62].

3. The Unsatisfactory Experience of Domestic Reparations Schemes

Having examined the situation regarding reparations, or rather, the lack of reparations at the international criminal law level, we will now proceed to analyse the reparations programmes offered at the domestic level.

After the genocide, Rwanda's Transitional Government adopted a series of measures to deal with the aftermath of these tragic events, in particular to help the survivors come to terms with their suffering and receive the help they needed.

In this trend falls the *Organic Law no. 08/96*[63] which, while providing the framework for prosecuting the *génocidaires*, also contained various provisions regarding reparations for the victims, who could participate as civil parties in criminal proceedings before Specialised Chambers within ordinary courts to claim reparation for their damages. Under such law, in fact, the Specialised Chambers were competent to adjudicate the victims' reparations claims within the criminal trials, recognising the civil liability of the offenders *in solidum* with the State of Rwanda[64]. Indeed, some early cases tried in Rwandan domestic courts, in addition to the conviction of the perpetrators, also awarded compensation to the victims[65].

However, it has been estimated that only half of the trials also awarded damages[66] as many victims were unfamiliar with the proceedings and often there was no one who actually filed a civil action[67]. Moreover, even when compensation was effectively awarded, the victims did not receive anything as the convicts were usually indigent and the Rwandan Government was very reluctant to pay[68].

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[62] Preparatory Commission for the International Criminal Court, Working Group on the Rules of Procedure and Evidence, *Comments on the report on the international seminar on victims' access to the International Criminal Court, Proposal by Colombia*, PCNICC/1999/WGRPE/DP.37, 10 August 1999.

[63] *Organic Law no. 08/1996 of 30 August 1996 on the Organization of Prosecutions for Offenses constituting the Crime of Genocide or Crimes Against Humanity committed since 1 October 1990*, OG no. 17, 1 September 1996.

[64] P.C. BORNKAMM, *Rwanda's Gacaca Courts: Between Retribution and Reparation*, Oxford University Press, Oxford, p. 132.

[65] F.M. NDAHINDA, *Debating and Litigating Post-Genocide Reparations in the Rwandan Context*, in C. FERSTMAN, M. GOETZ (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, *op. cit.*, pp. 635-636.

[66] H. ROMBOUTS, S. VANDEGINSTE, *Reparation for Victims in Rwanda: Caught between Theory and Practice*, in K. DE FEYTER, S. PARMENTIER., M. BOSSUYT, P. LEMMENS (eds.), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Antwerp and Oxford, 2005, p. 318

[67] P.C. BORNKAMM, *Rwanda's Gacaca Courts*, *op. cit.*, p. 138.

[68] *Ibid.*

In any case, this system of reparations mainly granted material damages for the destruction of houses, pillage of assets, or even killing of cattle, while compensation for physical or mental harm was granted only in exceptional cases[69], with sexual violence most often disregarded by the courts[70].

The law also laid down the creation of a "Victims Compensation Fund"[71], which was to be disciplined by another law, but in the end was replaced by a "National Fund for Assistance to the Neediest Victims of Genocide"[72] established in 1998 by the Rwandan Government. As suggested by its name, this National Fund for Assistance, also known with the acronym FARG from its French name (*Fonds d'Assistance aux Rescapés du Génocide*), "could obviously not be expected to perform the functions of the contemplated Compensation Fund"[73], given that it was established "as a means of trying to attend to the most urgent […] needs of genocide survivors"[74]. FARG, in fact, had mainly a social character as its beneficiaries were "survivors […] in need, especially orphans, widows, and handicapped persons"[75] and its mandate consisted mainly of assistance in the forms of education, health services and housing[76].

However, even though the Rwandan Government every year allocated 5% of its budget to the FARG, this number is actually misleading due to a series of factors like inefficiency, mismanagement, underspending, theft, and corruption that made it inadequate and insufficient for the victims[77]. Indeed, even if the FARG had an annual budget of nearly 10 million US dollars, with substantial funding coming also from foreign countries[78], "only a fraction of those entitled to receive assistance actually end[ed] up receiving it"[79].

Furthermore, although these kinds of assistance are extremely important, FARG only benefited a limited category of *rescapés* (survivors), as the "only types of harms indirectly recognized are those done to orphans, handicapped, and widows, who are mentioned as explicit examples of groups of people in

[69] *Ibid.*, p. 137.
[70] See Human Rights Watch Report, *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda*, September 2004, pp. 19-20.
[71] *Organic Law no. 08/1996 of 30 August 1996*, art. 32.
[72] *Law no. 02/1998 of 22 January 1998 Establishing a National Assistance Fund for the Neediest Victims of Genocide and Massacres Committed in Rwanda Between 1 October 1990 and 31 December 1994*, OG. no. 3, 1 February 1998.
[73] F.M. NDAHINDA, *Survivors of the Rwandan Genocide under Domestic and International Legal Procedures*, in R. LETSCHERT, R. HAVEMAN, A.M. DE BROUWER, A. PEMBERTON (eds.), *Victimological Approaches to International Crimes: Africa*, Intersentia, Cambridge, Antwerp and Portland, 2011, p. 472.
[74] *Ibid.*
[75] *Law no. 2/1998*, art. 14, para. 1.
[76] P.C. BORNKAMM, *Rwanda's Gacaca Courts*, *op. cit.*, p. 134.
[77] N. SCHIMMEL, *Advancing International Human Rights Law Responsibilities of Development NGOs: Respecting and Fulfilling the Right to Reparative Justice for Genocide Survivors in Rwanda*, Palgrave Macmillan, Cham, 2020, p. 83.
[78] H. ROUMBOUTS, *Victim Organisations and the Politics of Reparation: A Case-study on Rwanda*, Intersentia, Antwerp and Oxford, 2004, pp. 377-378.
[79] P.C. BORNKAMM, *Rwanda's Gacaca Courts*, *op. cit.*, p. 134.

need"[80], while victims of rape and other gender-based violence were not specifically included, thus potentially leaving out a vast number of people, given that according to a 1998 census the vast majority of *rescapés* was constituted by women[81]. Moreover, by not focusing on the specific kind of harms suffered by the victims in general, the FARG Law also demonstrated to be "insensitive to the gender-specific nature of the ensuing harms, such as different forms of trauma, loss of a breadwinner, loss of reproductive capacity, HIV infections, and forced pregnancies"[82].

For example, when it comes to the education programme FARG took a narrow view by focusing on support to young survivors going to secondary school, "but neglecting to take into account that widows and older survivors who have lost land and property and are impoverished need to be able to access job training and skills development in order to improve themselves economically"[83].

As social customs in Rwanda provide that the man was responsible for earning an income, "increasing the professional skills of women in certain areas […] could [have] clearly strengthen[ed] their economic position"[84]. Therefore, "[i]ncluding this type of training in the FARG educational program would [have] ma[de] it more sensitive to the needs of many adult women […] too old to go to secondary school"[85].

Furthermore, many women who were subjected to sexual violence and rape had damaging consequences to their health, however, "the FARG medical program missed the opportunity to make the medical services offered gender sensitive"[86]. Indeed, the health programme provided medical health cards to the survivors in order to receive free medical care at the hospitals. However, the care was not specific as it covered both "nongenocide-related diseases, such as the flu, and genocide-related diseases, such as wound infections, [and] medical consequences of mutilation"[87]. On the contrary, as has been noted, "[s]pecific lists of medical assistance to be provided could also have brought gender to the fore, for instance by including the treatments needed by women who suffered sexual violence, were infected with HIV or underwent secret abortions"[88]. Moreover, even the issue of mental health has been greatly overlooked by the FARG, as it had no success in launching a trauma-counselling programme[89].

Furthermore, due to the conflict most women had also lost their homes. Indeed, in the immediate aftermath of the genocide, customary law still disciplined the inheritance rules, under which women, due

[80] H. ROMBOUTS, *Women and Reparations in Rwanda: A Long Path to Travel*, in R. RUBIO-MARÍN (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council, New York, 2006, p. 215.
[81] *Ibid.*, p.209.
[82] *Ibid.*, p. 215.
[83] N. SCHIMMEL, *Advancing International Human Rights Law Responsibilities of Development NGOs*, *op. cit.*, p. 91
[84] H. ROMBOUTS, *Women and Reparations in Rwanda*, *op. cit.*, pp. 223-224.
[85] *Ibid.*, p. 224.
[86] *Ibid.*
[87] *Ibid.*
[88] *Ibid.*
[89] *Ibid.*

to their second-class status, could not inherit any property of their husbands or fathers unless explicitly designated as beneficiaries[90]. Although a new law in 1999[91] changed the precedent rules making it possible for women to become rightful owners of land, most of them "are still discriminated against in this respect, [and] continue to live in extreme poverty"[92].

In any case, it must be noted that the programmes provided under the FARG are to be considered only as social services provision and not as a form of reparations under international law.

Under these premises, we shall now pass to analyse other experiences of the Rwandan system, namely the so-called *Gacaca* courts, established by another domestic law, *Organic Law no. 40/2000*[93], with the aims of disclosing the truth of the tragic events, eradicating the culture of impunity by ensuring prosecution of the perpetrators and achieving reconciliation in the country[94].

The Gacaca courts, which operated until 2012, consisted of a bench of lay judges chosen from ordinary people considered 'persons of integrity' (*Inyangamugayo*) and a general assembly representing the entire population. They found inspiration in the traditional grassroots African conflict resolution systems. The word Gacaca, in fact, comes from the Kinyarwanda *umucaca*, which refers to a kind of grass, typical of certain hills, where a community traditionally "came together to discuss conflict within or between families or inhabitants"[95].

The Courts had the competence to adjudicate over crimes against humanity and acts of genocide committed between 1 October 1990 and 31 December 1994. The proceedings were public and for this reason the crimes of rape and other sexual violence were placed under *category 1* crimes[96], which could only be dealt with by ordinary courts[97], with Gacaca judges being told to only "verify what had been said, as far as they were able to, and to forward the information to the ordinary courts in a discreet manner"[98].

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[90] A.M. DE BROUWER, *Reparation to Victims of Sexual Violence*, *op. cit.*, p. 212.

[91] *Law no. 22/99 Of 12/11/1999 to Supplement Book I of the Civil Code and to Institute Part Five regarding Matrimonial Regimes, Liberalities and Successions*, OG no. 22, 15 November 1999.

[92] A.M. DE BROUWER, *Reparation to Victims of Sexual Violence*, *op. cit.*, p. 212.

[93] *Organic Law no. 40/2000 of 26/01/2001 setting up "Gacaca Jurisdictions" and Organising Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed between October 1, 1990 and December 31, 1994*, OG no. 6, 15 March 2000, as amended in 2004, 2007 and 2008.

[94] See *ibid.*, preamble.

[95] U. KAITESI, R. HAVEMAN, *Prosecution of Genocidal Rape and Sexual Torture before the Gacaca Tribunals in Rwanda*, in R. LETSCHERT, R. HAVEMAN, A.M. DE BROUWER, A. PEMBERTON (eds.), *Victimological Approaches to International Crimes*, *op. cit.*, p. 387.

[96] *Organic Law no. 40/2000 of 26/01/2001*, art. 51, para. 2, lit. d.

[97] *Ibid.*, art. 2, para. 2.

[98] Redress and African Rights, *Survivors and Post-genocide in Rwanda: Their Experiences, Perspectives and Hopes*, November 2008, p. 87.

When the Gacaca law was revised in 2004, it "enhanced protections for victims of sexual violence in order to facilitate reporting and testimony"[99], by allowing the victim of rape or sexual torture to submit her complaint directly to a judge of her choosing behind closed doors, or to testify in writing[100].

Like the *Organic Law no. 08/96*, the Organic Law that established the Gacaca Courts also provided for the creation of a compensation fund for the victims[101]. However, the fund was never established and the subsequent version of the Gacaca law in 2004 stated that, apart from cases of restitution or repayment of ransacked property[102], other forms of compensation were to be determined by a particular law[103].

The law[104] that was implemented pursuant to this provision established a specific Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity, which was later amended by a subsequent law in 2013[105] to drop any reference to crimes against humanity.

Among the tasks of the Fund is the assistance to the neediest survivors of the genocide, in particular elderly survivors who were left childless and need help in finding houses and permanent financial assistance, as well those who have become disabled as a result of the genocide or who were infected with incurable diseases and require constant medical care[106].

Some studies, however, have shown that the victims' experiences with this reparations scheme were not always satisfactory, since the Fund, though extremely important, would only benefit a small minority of survivors, such as orphans and elderly women, while those female victims who often had to revive their tragic experiences publicly in the Gacaca Courts would not even receive psychological support[107].

Indeed, the fact that the Gacaca system awarded reparations only in cases of destroyed or stolen property made the reconciliation process more difficult[108], as it led to the absurd situation that victims of looting

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[99] *Ibid.*, p. 27.

[100] *Organic Law no. 16/2004 of 19/6/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed between October 1, 1990 and December 31, 1994*, OG no. Special, 19 June 2004, art. 38, para. 1.

[101] *Organic Law no. 40/2000 of 26/01/2001*, art. 90.

[102] *Organic Law no. 16/2004 of 19/6/*2004, art. 95.

[103] *Ibid.*, art. 96.

[104] *Law no. 69/2008 of 30 December 2008 relating to the Establishment of the Fund for the Support and Assistance to the Survivors of the Tutsi Genocide and Other Crimes against Humanity Committed between 1st October 1990 and 31st December 1994, and Determining Its Organization, Powers and Functioning*, OG. no. Special, 15 April 2009.

[105] *Law no. 81/2013 of 11 September 2013 establishing the Fund for Support and Assistance to the Neediest Survivors of the Genocide against the Tutsi Committed between 01 October 1990 and 31 December 1994 and Determining Its Mission, Powers, Organisation and Functioning*, OG. no. 45, 11 November 2013.

[106] *Ibid.*, art. 5.

[107] See for example: A.M. DE BROUWER, E. RUVEBANA, *The Legacy of the* Gacaca *Courts in Rwanda: Survivors' Views*, in *International Criminal Law Review*, vol. 13, 2013, pp. 937-976, pp. 969-970; IBUKA, SURF and Redress, *Right to Reparation for Survivors: Recommendations for Reparation for Survivors of the 1994 Genocide against Tutsi*, Discussion Paper, October 2012; as well as more recent declarations from the organizations representing victims such as those reported at: JusticeInfo.Net, *Rwandan Reparations Fund Breaks Ground but Is Still Not Enough, Say Victims*", 17 March 2019.

[108] A.M. DE BROUWER, E. RUVEBANA, *The Legacy of the* Gacaca *Courts in Rwanda*, *op. cit.*, p. 961.

could be compensated, while women who were also victims of violence ended up with nothing at all[109]. Indeed, even after the written reform of the inheritance rules, they seldom held legal titles to property[110], since customary law were still largely practised[111]. The inheritance law, in fact, can be applied only to married couples, whereas in the rural areas of the hills of Rwanda couples do not always legally marry, but engage in *de facto* unions under customary law.

In general, the only form of reparations that the Gacaca system provided to victims of sexual violence was that of the so-called *symbolic* reparations, consisting of satisfaction measures like the disclosure of truth, the recognition of harm, public apologies, and commemorations. However, as a recent study has demonstrated, several victims were really critical about the lack of material reparations as "their financial and material (including medical) needs associated with the sexual violence persisted after gacaca"[112].

Indeed, beside physical and psychological consequences (which also have a material cost in terms of medical and therapeutic care), victims of rape and sexual torture often suffer from further social, economic, and financial issues which obstruct their reintegration into society[113], in particular in a setting like that of the Rwandan society where the sexual virtue of women is highly valued. Thus, "[u]nmarried women who are subjected to rape are likely to face difficulties in finding a husband, while married women may be left by their husbands and families"[114], with resulting additional economic difficulties for them.

This is one of the reasons why only about 7,000 cases of sexual violence have been brought before the Rwandan courts[115], even though the estimated number of women raped during the genocide ranges between 250,000 and 500,000, as many victims were worried about the social stigma and marginalisation that could derive from the information becoming public. Indeed, even with the secret reporting procedure of the Gacaca trials, in practice "these matters were difficult to keep private"[116], since the majority of Rwandan women lived in small communities where everybody knew each other and where there was the risk that, even if the survivors did not speak out in public, the accused, or even worse the

[109] P.C. BORNKAMM, *Rwanda's Gacaca Courts*, *op. cit.*, p. 133.
[110] H. ROMBOUTS, *Women and Reparations in Rwanda*, *op. cit.*, p. 217.
[111] Amnesty International, *Rwanda: The enduring legacy of the genocide and war*, 5 April 2004, p. 12.
[112] J. RAFFERTY, *Analysing the Justice Needs of Rwandan Female Victim-Survivors of Conflict-Related Sexual Violence and Their Experiences with the Gacaca Courts*, PhD Thesis, James Cook University, October 2020, p, 316.
[113] S. KA HON CHU, A.M. DE BROUWER, R. RÖMKENS, *Survivors of Sexual Violence in Conflict: Challenges in Prevention and International Criminal Prosecution*, in R. LETSCHERT, R. HAVEMAN, A.M. DE BROUWER, A. PEMBERTON (eds.), *Victimological Approaches to International Crimes*, *op. cit.*, pp. 538-539.
[114] J. RAFFERTY, *Analysing the Justice Needs of Rwandan Female Victim-Survivors of Conflict-Related Sexual Violence and Their Experiences with the Gacaca Courts*, *op. cit.*, p. 67.
[115] U. KAITESI, R. HAVEMAN, *Prosecution of Genocidal Rape and Sexual Torture before the Gacaca Tribunals in Rwanda*, *op. cit.*, p. 385.
[116] Redress and African Rights, *Survivors and Post-genocide in Rwanda*, *op. cit.*, p. 36.

judges, might do so[117]. Other women were simply reluctant to relive their experiences in fear of retraumatisation, given that many victims whose cases were examined before a Gacaca court suffered from severe trauma[118].

In general, many victims of sexual violence remained traumatised, but "psychological assistance has been almost nonexistent in post-genocide Rwanda"[119], with some counselling and psychological assistance provided only thanks to Non-Governmental Organisations for women, like AVEGA (*Association des Veuves du Génocide*), which, however, "lack the funding to offer it to all survivors who need it, and […] reach a miniscule percentage of the total survivor population who have an international human right to such services"[120].

Indeed, as stated in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, rehabilitation is an integral part of the reparation measures for victims of gross violations of human rights and serious violations of international humanitarian law, and, as already said above, it includes medical and psychological care, as well as legal and social services[121].

In any case, it should be underlined that these services should always be granted as measures of reparations and not as social service packages, since in the latter case there would be the risk of "conflation with general development programs"[122], which a State should always provide to its citizens in need. Indeed, as has been noted, "victims themselves do not always consider these service packages as a form of reparation, arguing that they have a right to that sort of assistance simply because of their economic status"[123]. Reparations, in fact, are an obligation of the State owned to those citizens whose rights have been violated and should not be conflated with welfare assistance or any general social programmes, since those derive from the State's obligations "with respect to economic, social and cultural rights that are owed to all persons within its jurisdiction whether or not they are victims of violations"[124].

Moreover, even if the quantification in economic terms of the harm suffered by victims of sexual violence is extremely challenging, often financial compensation still seems to be the form of reparations that

[117] *Ibid.* In general for a more in-depth analyses of the key concerns regarding the Gacaca procedure see the interviews contained in the Redress Report, pp. 33-54, as well as A.M. DE BROUWER, E. RUVEBANA, *The Legacy of the* Gacaca *Courts in Rwanda*, *op. cit.*

[118] See for example: K. BROUNÉUS, *Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan* Gacaca *Courts*, in *Security Dialogue*, vol. 39, 2008, pp. 55-76; K. BROUNÉUS, *The Trauma of Truth Telling: Effects of Witnessing in the Rwandan* Gacaca *Courts on Psychological Health*, in *Journal of Conflict Resolution*, vol. 54, 2010, pp. 408-437.

[119] H. ROMBOUTS, *Women and Reparations in Rwanda*, *op. cit.*, p. 209.

[120] N. SCHIMMEL, *Advancing International Human Rights Law Responsibilities of Development NGOs*, *op. cit.*, p. 93.

[121] *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, principle 21.

[122] H. ROMBOUTS, *Women and Reparations in Rwanda*, *op. cit.*, p. 222.

[123] *Ibid.*

[124] L. ARIMATSU, C. CHINKIN, *Gendered Peace through International Law*, Hart Publishing, Oxford, 2024, p. 235.

victims prefer[125] in order to deal with all the costs associated with sexual violence, including those of medication for both physical and psychological injuries, as well as the socioeconomic consequences, such as unemployment or loss of income due to remaining alone or being repudiated by their families[126].

Ultimately, it must be noted that, over the years, several foreign States, such as Belgium, France and Sweden, have instituted criminal proceedings against Rwandan genocide suspects, and that, in some of these cases, victims who participated as civil parties were awarded compensation[127]. However, not only the victims saw these reparations as merely symbolic[128], but also, they very rarely actually received the promised amounts[129].

4. How Reparations for Women Victims of Gender-based Violence Should Really Be: The Transformative Approach

As mentioned above, the experience of the *ad hoc* Criminal Tribunals, with their inadequacies, proved to be essential in highlighting the importance of reparations for any kinds of victims and, in particular, for women victims of sexual abuses.

During the negotiations for the Rome Statute of the ICC, which was adopted in 1998, the organisation *Women's Caucus for Gender Justice* (now known as *Women's Initiatives for Gender Justice*[130]) was one of the most ardent advocators for the creation of a Trust Fund for Victims, which "was deemed necessary to provide the ICC with an alternative means to ensure reparations for victims, who would otherwise be dependent on the financial solvency of the perpetrator"[131].

The Trust Fund, which under Article 79[132] of the Statute is independent from the ICC and is managed by the Assembly of States Parties, was officially established in 2002 but became operational only at the beginning of 2007. Although under Article 75(2)[133] reparations orders are dependent upon the conviction of the accused, the Trust Fund can nevertheless provide "assistance for victims in the form of

[125] See for example the interviews at J. RAFFERTY, *Analysing the Justice Needs of Rwandan Female Victim-Survivors of Conflict-Related Sexual Violence and Their Experiences with the Gacaca Courts*, *op. cit.*, pp. 315-316.
[126] *Ibid.*, p. 176.
[127] For an overview of the foreign domestic courts' cases, see: F.M. NDAHINDA, *Debating and Litigating Post-Genocide Reparations in the Rwandan Context*, *op. cit.*, pp. 647-651.
[128] F.M. NDAHINDA, *Survivors of the Rwandan Genocide under Domestic and International Legal Procedures*, *op. cit.*, p. 488.
[129] F.M. NDAHINDA, *Debating and Litigating Post-Genocide Reparations in the Rwandan Context*, *op. cit.*, p. 649.
[130] See Women's Initiatives for Gender Justice.
[131] C. EVANS, *The Right to Reparation in International Law for Armed Conflicts*, *op. cit.*, p. 105.
[132] *Rome Statute*, art. 79: "1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims. 2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund. 3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties".
[133] *Rome Statute*, art. 75, para. 2.

rehabilitation and livelihood opportunities"[134]. However, of the five cases[135] so far where reparations have been awarded, only one reparations programme has been officially completed[136] due to the limited funds the Trust Fund has had access to, as it has to rely primarily on voluntary contributions from States, international organisations or individuals.

In any case, the hardships experienced by female victims in conflict situations "galvanised support for the inclusion of gender-sensitive victims' provisions"[137]. The 2000 Security Council Resolution 1325 on *Women, Peace and Security*[138] and the 2007 civil society initiative of the *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*[139] are part of this process.

The first one, in fact, calls for the adoption of a gender perspective which includes the special needs of women and girls for rehabilitation, reintegration and post-conflict reconstruction[140].

The second one, instead, builds on the *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, in order to "redefine reparation from a gendered perspective"[141], as "[r]eparation must go above and beyond the immediate reasons and consequences of the crimes and violations; [and] they must aim to address the political and structural inequalities that negatively shape women's and girls' lives"[142].

Like the *Basic Principles*, which "identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law"[143], the Nairobi Declaration does not entail new legal obligations. Nevertheless, it "further develops certain aspects of the theory of reparation and presents a number of innovative points"[144], like for example the addition of reinsertion[145] to the other forms of reparations included in the *Basic Principles* (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition)[146], or the expansion of the notion of "victim" to include the context of women's and girls' experiences[147]. Moreover, according to the Nairobi Declaration reparation processes should allow women and girls to

134 C. EVANS, *The Right to Reparation in International Law for Armed Conflicts*, *op. cit.*, p. 123.
135 ICC: *The Prosecutor v. Thomas Lubanga Dyilo; The Prosecutor v. Germain Katanga; The Prosecutor v. Ahmad Al Faqi Al Mahdi; The Prosecutor v. Bosco Ntaganda; The Prosecutor v. Dominic Ongwen*.
136 ICC, *The Prosecutor v. Katanga*.
137 C. EVANS, *The Right to Reparation in International Law for Armed Conflicts*, *op. cit.*, p. 121.
138 UN Security Council, *Resolution on Women, Peace and Security*, UN Doc. S/RES/1325 (2000), 31 October 2000.
139 *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*, March 2007.
140 UN Security Council, *Resolution on Women, Peace and Security*, *cit.*, para. 8, lit. a.
141 V. COUILLARD, *The Nairobi Declaration: Redefining Reparations for Women Victims of Sexual Violence*, in *International Journal of Transitional Justice*, vol. 1, 2007, pp. 444-453, p. 445.
142 *Nairobi Declaration*, principle 3, lit. h.
143 *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, preamble, para. 7.
144 V. COUILLARD, *The Nairobi Declaration*, *op. cit.*, p. 449.
145 *Nairobi Declaration*, principle 3, lit. a.
146 *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, principle 18.
147 *Nairobi Declaration*, para. 4.

determine for themselves what forms of reparations are best suited to their situation and should also overcome customary laws and practices that prevent them from deciding about their own lives[148].

The aspects in which the Declaration differs from the *Basic Principles* are the objectives of transformation and participation.

According to the first, reparations must have as a goal the transformation of post-conflict societies by eliminating socio-cultural injustices as well as political and structural inequalities, since usually the origins of violations of women's and girls' human rights predate the conflict situation, and, thus, reintegration and restitution by themselves are not sufficient[149]. The concept of transformative reparations has been discussed also by the *Special Rapporteur on violence against women* who noted that, since violence "generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to link individual reparation and structural transformation"[150]. Reparations in international law, in fact, are still influenced by the formula elaborated in the *Chorzów Factory* case, according to which the primary form of reparation should be the re-establishment of the *status quo ante*[151]. On the contrary, "adequate reparations for women cannot simply be about returning them to where they were before the individual instance of violence, but instead should […] aspire […] to subvert […] pre-existing structural inequality that may be at the root causes of the violence the women experience before, during and after the conflict"[152]. An example of this concept can be found in the jurisprudence of the Inter-American Court of Human Rights, which in the *Cotton Field* case[153], bearing in mind the context of structural discrimination towards women in which the facts of the case occurred, stated that "reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification"[154] and that the "reestablishment of the same structural context of violence and discrimination is not acceptable"[155].

It should be mentioned, however, that some critical voices do not consider reparations to be the appropriate mechanism through which to pursue the social, economic and political transformation of a

148 *Ibid.*, principle 2, lit. d.
149 *Ibid.*, para. 3.
150 UN General Assembly, Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc. A/HRC/14/22, 23 April 2010, para. 24
151 PCIJ, *Case Concerning the Factory at Chorzów, Claim for Indemnity, Merits*, Judgement of 13 September 1928, PCIJ Series A, No. 17, p. 47.
152 *Report of the Special Rapporteur on violence against women, its causes and consequences*, *op. cit.*, para. 31.
153 For a more comprehensive analysis of the case see: R. RUBIO-MARÍN, C. SANDOVAL, *Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the* Cotton Field *Judgment*, in *Human Rights Quarterly*, vol. 33, 2011, pp. 1062-1091.
154 IACtHR, *Case of González* et al. *("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of 16 November 2009, para. 450.
155 *Ibid.*

society[156]. According to them, in fact, "reparations should be designed above all to *recognize*, *relieve* and *support* individual victims […] with respect to the specific violations they have endured and the lives they want to rebuild"[157], and not to repair societies or their socioeconomic and political structures[158]. As has been noted, "it would be unrealistic to expect reparations programs alone to […] build[…] active citizenship, lasting democracy and sustainable human development"[159], given that it is the State that should bear "the primary responsibility, not only for redressing past harms, but also for securing human, economic and social rights for all its population"[160]. Therefore, only if the State or the authority implementing the reparations had a specific mandate and the capacity to facilitate meaningful change could the transformation actually take place[161]. According to other critics, in fact, the pursuit of transformative reparations would exceed the mandate of international criminal courts, which should be focused on adjudicating an accused's guilt and repairing victims of international crimes, rather than forging broader societal change[162], due also to the practical difficulties that may arise when implementing reparations programmes[163], like, first and foremost, the lack of financial resources.

Nonetheless, even the critics of transformative reparations concede that, in a given case, victims of gross violations "could prefer […] to see social-structural change instead of redress for previous harms"[164]. What really matters, in fact, is understanding victims' priorities and perceptions through their extensive consultation and their participation in the definition, design and implementation of a reparations process[165].

In this regard, it should be emphasised that the second innovative aspect of the Nairobi Declaration concerns, indeed, the full participation of women and girls in all stages of the reparations processes from the planning to the implementation[166]. However, this participation "means much more than the simple presence of women in the decision-making structures of reparations programmes"[167]. Indeed, the

156 M. URBAN WALKER, *Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations*, in *International Journal of Transitional Justice*, vol. 10, 2016, pp. 108-125, p. 111.
157 *Ibid.*, p. 121.
158 *Ibid.*, p. 122.
159 C. DUGGAN, A. ABUSHARAF, *Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice*, in P. DE GREIFF (ed.), *The Handbook of Reparations*, Oxford University Press, New York, 2006, p. 644.
160 S. WILLIAMS, E. PALMER, *Transformative Reparations for Women and Girls at the Extraordinary Chambers in the Courts of Cambodia*, in *International Journal of Transitional Justice*, vol 10, 2016 pp. 311-331, p. 331.
161 B. MCGONIGLE LEYH, J. FRASER, *Transformative Reparations: Changing the Game or More of the Same?*, in *Cambridge International Law Journal*, vol. 8, 2019, pp. 39- 59, p. 58.
162 See for example *ibid.*, pp. 53-56, and L. ULLRICH, *Victims and the Labour of Justice at the International Criminal Court: The Blame Cascade*, Oxford University Press, Oxford, 2024, pp. 198-203.
163 See for example, L. ULLRICH, *Victims and the Labour of Justice at the International Criminal Court*, *op. cit.*, pp. 216-229.
164 M. URBAN WALKER, *Transformative Reparations?*, *op. cit.*, p. 125.
165 *Ibid.*
166 *Nairobi Declaration*, principle 2, lit. b.
167 V. COUILLARD, *The Nairobi Declaration*, *op. cit.*, p. 451.

involvement of women in the reform of the society through the reparation programmes will lead to their recognition as citizens who are fully capable of taking part in the determination of the political order[168].

In this perspective, while judicial remedies that prescribe health care, financial compensation and property substitution are undoubtedly essential components of reparations, they alone "will not suffice in having a transformatory and empowering impact for women survivors"[169].

Nevertheless, as noted by authoritative doctrine, "[s]imply including women in post-conflict resolution or peacebuilding initiatives can be perceived as an 'add women and mix' approach that has been unsuccessful in achieving any transformation in the existing structures"[170]. This happens because sometimes the initiatives to include women in public roles may be based on the assumption that they are more cooperative and peaceful than men[171]. However, this only reinforces stereotypes against women, while the simplest reason why women should be included in these activities is that it is their lives "what is being dealt with [and] thus they should have a say in any decisions that are made"[172].

Going back to the example of Rwanda, it must be acknowledged that, after the genocide, the new Government tried to enact some initiatives[173] to address gender inequalities, which, however, were not always effective (like we saw for the inheritance law), or, even worse, had far from the desired effect. Indeed, the new Rwandan Constitution adopted in 2003, which explicitly provides for the equality between men and women by ensuring that women occupy at least 30% of positions in decision-making organs[174], has made of Rwanda one of the countries with the world's highest percentage of women in Parliament. Nevertheless, in practice "far from transforming the ethnic hierarchy of the postcolonial state or entrenched poverty, women's political rise actually helped to […] deepen divisions of women from different ethnic backgrounds"[175], as all the women in the Government were closely aligned with the ruling party of President Kagame who has been known for the illiberal treatment of his political opponents, especially those belonging to different ethnic groups[176].

In conclusion, by presenting the unsuccessful experiences of reparations for women in Rwanda, this paper has tried to demonstrate the need for a direct involvement of women in reparation processes at all

168 *Ibid.*
169 *Ibid.*, p. 452.
170 J. GARDAM, H. CHARLESWORTH, *Protection of Women in Armed Conflict*, in *Human Rights Quarterly*, vol. 22, 2000, pp. 148-166, p. 165.
171 *Ibid.*
172 *Ibid.*
173 See H. ROMBOUTS, *Women and Reparations in Rwanda*, *op. cit.*, p. 205.
174 Rwanda's Constitution of 2003 with Amendments through 2015, art. 10, para. 4, available at the Constitute Project website.
175 M.E. BERRY, M. LAKE, *Women's Rights After War and Genocide: Contradictions and Challenges*, in *Journal of Genocide Research*, vol. 26, 2024, pp. 474-483, p. 476.
176 *Ibid.*

stages, so that reparations can truly be transformative and contemplate the victims' needs of redress, recognition, and compensation together "with the larger political aims of societal healing and national reconciliation"[177].

The impact of gender-based violence, in fact, often results in prolonged suffering for the victims even many years after the end of the conflict situation. Therefore, States and courts should devise reparations programmes that are gender sensitive and genuinely aimed at promoting women's rights, in order not simply to repair the harms suffered, but also to transform social structures and relationships, including gender stereotypes[178]. Otherwise, as we saw for the case of Rwanda, women's and girls' conditions might continue to be burdened by the socioeconomic injustices that pre-existed the time of the conflict and that often left them alone and shunned, not only by society, but even by their own families.

[177] R. RUBIO-MARÍN, *The Gender of Reparations in Transitional Societies*, in R. RUBIO-MARÍN (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, Cambridge University Press, Cambridge, 2009, p. 70.

[178] L. ARIMATSU, C. CHINKIN, *Gendered Peace through International Law*, *op. cit.*, p. 232.

Between Definition and Ambiguity: Gender in the Draft Crimes Against Humanity Treaty *

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Abstract [En]: The absence of a gender definition in the draft Crimes Against Humanity treaty raises concerns about narrowing accountability for gender-based crimes, despite the Rome Statute's express definition in Article 7(3). This omission risks reinforcing a binary understanding of gender and limiting the prosecution of persecution, forced marriage, and other forms of violence that disproportionately affect women, girls, and gender non-conforming individuals. Building on feminist and queer legal scholarship, the article argues that an inclusive definition of gender is essential to capture the full spectrum of harm and to secure justice for all victims of armed conflict.

Abstract [It]: L'assenza di una definizione di genere nella bozza del trattato sui crimini contro l'umanità desta fondate preoccupazioni in merito alla possibilità di accertare responsabilità penali per crimini di genere, nonostante quanto previsto dall'art. 7(3) dello Statuto di Roma. Tale lacuna normativa rischia di consolidare una visione del genere rigidamente binaria (maschio/femmina), ostacolando la qualificazione giuridica di condotte persecutorie e di altre forme di violenza che colpiscono in misura sproporzionata donne, ragazze e persone non conformi al binarismo di genere. Alla luce degli sviluppi della dottrina femminista e queer contemporanea, si sostiene la necessità di introdurre una definizione ampia e inclusiva del concetto di genere, idonea a ricomprendere l'intero spettro delle violazioni riconducibili ai crimini contro l'umanità.

Keywords: Gender, International Criminal Law, Crimes Against Humanity, Treaty-making, Reparations.
Parole chiave: Genere; Diritto penale internazionale; Crimini contro l'umanità; formazione dei trattati; Riparazioni

Table of contents: **1.** Introduction; **2.** Legal background; **3.** The current debate: legal implications of non-definition; **4.** Prosecuting gender-based crimes; **5.** The impact of non-definition on reparations for gender-based crimes; **6.** Towards a constructive definition; **7.** Conclusions.

1. Introduction

This contribution aims to deepen the debate around the contested (non-)definition of gender in the draft Crimes Against Humanity (CAH) treaty. The issue has acquired renewed urgency following the United Nations General Assembly's Sixth Committee decision to begin formal negotiations in January 2026. Scholarly and political attention has increasingly converged on the definitional question, particularly after the International Law Commission (ILC) removed an explicit definition of gender from the Draft Articles in 2019.

The controversy is not merely semantic. At stake is a broader tension in international criminal law, where the categories of "sex" and "gender" have alternatively served as sites of liberation and exclusion. On the

* Peer reviewed.

one hand, they have enabled recognition of forms of persecution that were historically marginalised; on the other, they have acted as instruments of exclusion when reduced to rigid, biologically determinist categories.

International law is never a neutral terrain: it reflects, and often reproduces, hierarchies of gender, race, and sexuality. Whether the CAH treaty expressly defines gender or leaves it open will directly influence how courts and prosecutors address persecution against women, men, and those whose identities fall outside the male/female binary.

Open-ended references to gender may enable interpretive flexibility, allowing courts to extend protections to marginalised groups, including transgender, intersex, and non-binary persons. Yet, ambiguity also risks reinforcing cultural biases and enabling restrictive judicial interpretations. It may provide fertile ground for restrictive judicial interpretations, especially in jurisdictions where entrenched cultural biases, heteronormativity, or political resistance to LGBTQI+ rights remain strong. In such contexts, non-definition may inadvertently reinforce exclusion rather than expand protection.

This article advances the argument that any future treaty provisions must rest on a broad, inclusive, and evolving understanding of gender. The most pressing concern is to prevent a regression to Article 7(3)'s restrictive language, which has already proven inadequate in addressing the realities of gender-based persecution and risks excluding entire categories of victims. That provision, with its narrow binary formulation, has proven inadequate in addressing the realities of gender-based persecution and risks excluding significant categories of victims from protection.

International law scholars, such as Santos de Carvalho,[1] have persuasively argued that leaving gender undefined in international criminal law can be beneficial, as it preserves interpretive openness and resists the ossification of exclusionary categories. While her position highlights important merits of non-definition, I contend that in the specific context of the CAH treaty, silence is not viable. Given the Rome Statute's enduring binary legacy and the heightened risk of judicial regression, the CAH treaty cannot rely on ambiguity alone – it must provide safeguards against restrictive readings.

While the ideal solution would be to codify a constructive definition of gender (one that affirms its socially constructed character and allows space for evolving interpretations), this may not prove politically feasible in treaty negotiations. In such circumstances, leaving gender undefined would be preferable to reinstating outdated and exclusionary language.

The issue, therefore, is not to insist that only an explicit definition can secure justice, nor to prescribe a singular normative vision of what feminist justice must entail. Rather, the challenge is to ensure that the

[1] J. SANTOS DE CARVALHO, *The Powers of Silence: Making Sense of the Non-Definition of Gender in International Criminal Law* in *Leiden Journal of International Law* vol. 35, 2022.

treaty does not foreclose inclusive interpretations and that it provides sufficient space for courts and prosecutors to adapt legal understandings of gender to contemporary realities and needs. In this light, the CAH treaty negotiations are not merely technical exercises in drafting, but critical junctures where the international community must decide whether to perpetuate restrictive formulations or to create interpretive space for broader, evolving understandings of gender-based harm.

2. Legal background

The treatment of gender within international criminal law has been a longstanding site of contestation. As Charlesworth and Chinkin famously argue, the very claim to universality in international law is illusory, since its development has privileged male experiences and granted protections to men that were not extended to women. This critique captures the broader challenge of integrating gender into international law: far from being a neutral category, law itself has historically reproduced assumptions about masculinity, femininity, and the behaviours attached to them.[2]

The path toward recognising gender in international law has, however, been uneven and fragmented. The earliest international instruments addressing gender-based harms were the Geneva Conventions, which did not use the term "gender" but referred to the protection of women's honour. For decades, conflict-related sexual violence was conceptualised less as an attack on individual integrity than as an affront to the dignity of a community through the violation of "its" women.[3]

A similar framing marked the first human rights instruments. The Universal Declaration of Human Rights (UDHR) prohibited discrimination on the basis of "sex," without interrogating the cultural and structural forces that shape gender roles. Article 1 of the UDHR proclaimed that both women and men are entitled to the rights enshrined in it, "without distinction of any kind, such as ... sex."[4]

This sex-based framing carried over into later treaties. Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibit discrimination "on the ground of sex." The 1979 Convention on the Elimination of

[2] H. CHARLESWORTH AND C. CHINKIN, *The Boundaries of International Law: A Feminist Analysis*, Manchester University Press 2000, p. 13–18.; and *The Gender of Jus Cogens* in *Human Rights Quarterly* n. 15, 1993. Interestingly, the etymology of "gender" comes from the Latin *genus* (kind, race, family). Traditionally, "gender" referred to grammatical categories of nouns (masculine, feminine, neuter), with no reference to the biological sex of individuals. A conceptual shift occurred in the twentieth century, when "gender" began to be used as a synonym for "sex," largely through the development of sexology in the early 1900s, which emphasised the socially constructed character of sexual behaviours and identities. See E. Y. KRIVENKO, *Gender and Human Rights*, Edward Elgar, 2020.

[3] For instance, Article 27 of the Fourth Geneva Convention states that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Geneva, 12 August 1949, Art. 27.

[4] Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III), 10 December 1948, art. 1.

All Forms of Discrimination against Women (CEDAW) reinforced this approach, defining discrimination against women as "any distinction, exclusion or restriction made on the basis of sex" (Article 1).[5]

While CEDAW was pioneering in its recognition of women's rights, feminist critique soon exposed its limits: the treaty's emphasis on sex left little room for recognising gender as a socially constructed and relational category. Harms such as forced marriage or social ostracism were not easily captured within a framework that equated discrimination solely with biological difference.[6]

The emergence of "gender" as a political and analytical category came later, particularly during the United Nations Decade for Women (1975–1985). This momentum culminated in the 1995 Beijing Declaration and Platform for Action, where delegations fiercely debated how to define gender. The final compromise was to leave gender undefined, merely noting its "commonly accepted" meaning. This ambiguity reflected sharp divisions between feminist advocates and conservative state and non-state actors.[7]

A few years later, this debate spilt over into the negotiations of the Rome Statute of the ICC. The Rome negotiations around the definition of gender were no less contentious than the ones for the Beijing Declaration and Platform for Action, but the Rome Statute marked a watershed: for the first time, an international treaty explicitly addressed gender-based crimes, and included gender among the grounds recognised for persecution as a CAH under Article 7. These inclusions were the result of sustained feminist advocacy, which fought to ensure that crimes long considered "collateral" were placed on an equal footing with other CAH.

Specifically, Article 7(1)(g) prohibits various forms of sexual violence such as rape, sexual slavery, enforced pregnancy, forced sterilisation, and others of comparable gravity. Article 7(1)(h) expressly prohibits persecution against any identifiable group "on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds."

Article 7(3) provides a codified definition solely for gender, unlike other grounds, stating that it refers to "the two sexes, male and female, within the context of society," and excluding "any meaning different

[5] Convention on the Elimination of All Forms of Discrimination against Women, UN General Assembly Resolution 34/180, 18 December 1979, art. 1.

[6] V. OOSTERVELD, *The Definition of "Gender" in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?* in *Harvard Human Rights Journal* n. 18, 2005.

[7] The Annexe of the Beijing Declaration clearly illustrates this contentious debate, particularly between feminist movements and religious State and non-State actors. See e.g., Holy See's Final Statement at Beijing Women's Conference, http://www.its.caltech.edu/~nmcenter/women-cp/beijing3.html. See also: S. BADEN and A. M. GOETZ, *Who Needs [Sex] When You Can Have [Gender]?: Conflicting Discourses on Gender at Beijing* in *Feminist Review* n. 3, 1997.

from the above."[8] Although this formulation nods to the social construction of gender, it anchors the concept to a strict male/female binary, neglecting transgender, intersex, and non-binary persons. The compromise reflected political bargaining, especially pressure from delegations intent on avoiding recognition of LGBTQI+ rights.[9]

In practice, this definition has proven highly restrictive. The jurisprudence of the ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) had already recognised sexual violence as constituting acts of genocide, torture, and persecution – most famously in *Akayesu*, *Furundžija*, and *Kunarac* – but their judgments conceptualised such crimes primarily through the lens of women's victimisation. These decisions were groundbreaking in acknowledging sexual violence as central rather than peripheral to armed conflict, yet they reinforced a binary understanding of victimhood, leaving male, queer, and gender-nonconforming survivors largely invisible.

The ICC has inherited this legacy. The *Al Hassan* case, the first prosecution for gender-based persecution, marked a milestone in grappling with the "social construction" of gender.[10] Yet despite extensive evidence of rape, sexual slavery, forced marriage, and persecution, the Court ultimately acquitted on the charge of gender persecution, citing the lack of a clear statutory foundation for expansive interpretation. This outcome highlighted the fragility of gender persecution charges when definitions remain contested.

Initially, the ILC retained the Rome Statute's definition of gender in its Draft Articles on CAH, but removed it in 2019, amid growing pressure from States and civil society. While this move avoided replicating exclusionary language, it reopened fundamental questions: does leaving gender undefined expand interpretive space for inclusivity, or does it risk a regression toward the very binary understanding codified in Article 7(3)?

3. The current debate: legal implications of non-definition

Almost thirty years after the Rome Statute negotiations, the debates over the definition of gender in international criminal law have resurfaced with renewed intensity. The ILC's decision to remove the Rome Statute's definition from its Draft Articles on CAH was widely welcomed, as it prevented the replication of outdated and exclusionary language. At the same time, this removal also created a significant normative and doctrinal gap. Whether the omission represents a deliberate choice to preserve conceptual openness or an abdication of responsibility remains deeply contested.

[8] "For the purpose of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term gender does not indicate any meaning different from the above." Article 7(3) Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

[9] V. OOSTERVELD, *Constructive Ambiguity and the Meaning of "Gender" for the International Criminal Court,* in *International Feminist Journal of Politics* n. 16, 2014, p. 563.

[10] *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Case No. ICC-01/12-01/18, Judgment, 25 May 2022.

3.1. Arguments in favour of non-definition

For some international lawyers, leaving gender undefined should not be dismissed as a drafting failure but as a conscious strategy to accommodate the evolving nature of gender, moving beyond the rigid binaries entrenched in the Rome Statute's Article 7(3). It avoids ossifying legal understanding and allows courts and prosecutors to recognise the persecution of individuals and groups outside the traditional male/female binary, including non-binary, transgender, and intersex subjects, as victims of CAH.[11]

Ambiguity also allows for more intersectional approaches. Scholars emphasise that gender-based violence rarely occurs in isolation but intersects with race, ethnicity, religion, class, and sexuality. By resisting closure, non-definition provides space to capture these layered vectors of subordination.[12]

Queer-feminist theorists reinforce this position. Building on prior feminist theorists such as Butler,[13] Otto has persuasively argued that both "sex" and "gender" should be seen not as static binaries but as the effects of performative and reiterative norms that discipline bodies and identities.[14] International human rights law has historically naturalised a binary view of sex and gender, framing them as fixed and oppositional categories. This dualism marginalises those whose identities fall outside these categories and silences the roles of homophobia and transphobia in shaping gender itself.[15]

Similarly, Butler's account of gender underscores the risks of fixed legal definitions. She challenges the very distinction between sex and gender, positing that both are discursively constructed and inseparable from gender performativity. In her view, gender is a repetitive performance that both produces and disrupts normative categories. Thus, codifying a rigid definition risks reifying oppressive norms. In this light, the ambiguity in the CAH draft treaty is not simply a legal lacuna but a political intervention that resists ossification and acknowledges the plurality of lived experiences.

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[11] A. L. KATHER, J. SANTOS DE CARVALHO, *On the significance and potential of a non-definition: the "gender" debate in the draft crimes against humanity treaty,* in *Just Security*, 2 October 2024, available here.

[12] A. L. KATHER, J. SANTOS DE CARVALHO, *On the significance, op.cit.*

[13] J. BUTLER, *Gender Trouble: Feminism and the Subversion of Identity*, Routledge, 1990.

[14] D. OTTO, *Queering Gender [Identity] in International Law*, in *Nordic Journal of Human Rights*, vol. 33, 2015, p. 302.

[15] According to her, the entrenchment of the sex/gender binary in international law has led some feminists to assume that "biology ('sex') provided the foundation for social conceptions of masculinity and femininity and that gender was a dualistic construction." D. OTTO, *International Human Rights Law: Towards Rethinking Sex/Gender Dualism* in V. MUNRO and M. DAVIES (eds), *The Ashgate Research Companion to Feminist Legal Theory,* Routledge, 2013, p. 204.

3.2. Risks and drawbacks of non-definition

The very openness that underpins non-definition also carries serious drawbacks. Scholars[16] and activists[17] warn that the absence of a legal definition may result in uncertainty, indeterminacy, and inconsistent interpretations once States implement the treaty domestically. Without explicit legal guidance, courts may revert to restrictive interpretations.

Under Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT),[18] undefined terms must be interpreted according to their ordinary meaning within the treaty's context and object and purpose. In practice, however, customary judicial practice frequently involves referencing pre-existing instruments for interpretive guidance. Given the continued influence of the Rome Statute, there is a substantial risk that, to fill the lacuna on gender, judges and prosecutors will revert to the binary definition contained in Article 7(3).[19]

This risk is heightened in jurisdictions where cultural or political resistance to LGBTQI+ rights remains strong. Ambiguity may encourage restrictive judicial approaches that limit recognition of non-binary, transgender, or queer victims. In a broader context of democratic backsliding and conservative resurgence – from the United States to Argentina, Italy, and Hungary – there is a real danger that non-definition will be weaponised to narrow protection rather than broaden it.[20]

Consequently, the non-definition approach, while normatively ambitious, may paradoxically promote legal fragmentation and disenfranchisement of marginalised victims. The very ambiguity intended to promote inclusivity may instead lead to legal fragmentation and inconsistent domestic implementation.

3.3. A double-edged openness

This debate underscores a fundamental dilemma: whether international criminal law should aspire to stability through codified definitions or embrace openness to accommodate evolving social realities. At

[16] R. GREY, *On Hope, Reform and Risk: The Rome Statute's Definition of 'Gender' and the Crimes Against Humanity Convention*, in *EJIL*, 2025.

[17] Madre, CIJUS, CUNY, OutRight (2018) A toolkit for advocates – The Crimes Against Humanity Treaty, available on Madre website. In this call to action, the authors expressly ask for an "inclusive definition" of gender as well as persecution, torture, and sexual enslavement.

[18] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, art. 31(1).

[19] V. OOSTERVELD, *The Definition of "Gender", op.cit.*

[20] Governments in those countries have sought to dismantle inclusive protections and redefine gender in biologically essentialist terms. See C. ROGGEBAND and A. KRIZSA□ N, *Democratic Backsliding And The Backlash Against Women's Rights: Understanding The Current Challenges For Feminist Politics,* UN Women, Discussion Paper N. 35, 2020, available here. In particular, the Trump administration's policies explicitly attempted to roll back gender-based protections. M. NICHOLS, M. GEBEILY, *US Targets Diversity, Equity, Inclusion at United Nations*, in *Reuters*, 14 February 2025, available here.

the same time, the reliance on indeterminacy alone may be insufficient to dismantle entrenched structures of exclusion, since courts often reproduce dominant norms unless guided otherwise.[21]

The current debate, therefore, reveals the double-edged character of non-definition. On one hand, it creates interpretive space for progressive approaches grounded in feminist and queer scholarship; on the other, it risks legal fragmentation and exclusion, particularly if courts revert to restrictive frameworks under political pressure. In this sense, the omission of a definition in the CAH draft treaty is not a mere technical issue. It is a site where the competing projects of feminist inclusion, queer resistance, and conservative retrenchment collide.

4. Prosecuting gender-based crimes

The absence of a definition of gender may affect the prosecutorial framework for gender-based crimes. Prosecutorial discretion and institutional culture deeply influence the prosecution of gender-based crimes. Ambiguity in the Rome Statute's Article 7 has shaped the cautious approach to charging gender-based persecution.[22] In contexts where treaty language is ambiguous, judges are likely to limit the potential recognition of harms that do not fit into conventional binaries.

4.1. The interpretative vacuum

Without a codified definition, courts may hesitate to draw on progressive interpretive tools, such as the Yogyakarta Principles[23] and the ICC's 2023 Policy on Gender-Based Crimes.[24] Both instruments recognise gender as a social construct shaped by cultural, political, and economic power dynamics and call for intersectional approaches, recognising that gender-based persecution interacts with other grounds such as race, ethnicity, or religion.

In principle, such interpretive flexibility could expand accountability. It might, for example, enable recognition of Taliban persecution of LGBTQI+ persons for "deviant" gender expression, or the systematic use of sexual violence in conflict as a tool of domination. In practice, however, the absence of explicit treaty language often deters prosecutors from advancing innovative interpretations. The fear of judicial rejection or acquittal can discourage reliance on expansive readings, creating a chilling effect at the charging stage.

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[21] A. GROSS, *Queer Theory and International Human Rights Law: Does Each Person Have a Sexual Orientation?* in *Proceedings of the American Society of International Law*, n. 129, 2007.

[22] V. OOSTERVELD, *Constructive Ambiguity, op.cit.*

[23] *Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, International Commission of Jurists, 10 November 2017, available here.

[24] International Criminal Court, Office Of The Prosecutor, *Policy on Gender-Based Crimes*, 2023, p. 4, available at the ICC website.

The problem is particularly acute in national jurisdictions. Domestic courts often interpret international crimes in light of their own legal traditions. In settings where political resistance to recognising non-normative gender identities remains strong, judges may be reluctant to extend protection beyond binary categories. Non-definition thus risks entrenching divergent national practices, with inclusivity in some contexts and exclusion in others.

4.2. Jurisprudential constraints

The Rome Statute continues to cast a long shadow. Article 7(3)'s binary definition of gender may serve as the default reference point whenever ambiguity arises. This legacy has already been visible in the ICC's mixed records.

To date, only three cases of gender persecution have advanced past the Pre-Trial stage: *Prosecutor v. Al Hassan*, *Prosecutor v. Said*, and *Prosecutor v. Abd-Al-Rahman*. Among these, *Al Hassan* (2019) remains the first, and so far the only, instance in which gender persecution has been charged in relation to women, based on restrictive religious norms regulating women's behaviour in public spaces. The case was landmark because, for the first time, the ICC Prosecutor relied on Article 7(1)(h) to frame systemic restrictions on women's autonomy as constituting persecution on gender grounds. Despite extensive evidence of rape, sexual slavery, forced marriage, and persecution, the Trial Chamber acquitted on the charge of gender-based persecution, in part because of the lack of a clear statutory foundation for interpreting gender expansively.

The *Said*[25] and *Abd-Al-Rahman*[26] cases show a partial departure from earlier jurisprudence. In both, the Prosecutor alleged persecution not only on political, ethnic, and religious grounds but also on gendered grounds. In *Abd-Al-Rahman*, the charges reflected the systematic targeting of men and boys for execution, arbitrary detention, and ill-treatment. They were perceived as embodying the political or ethnic identity of their community and, in some instances, their gender made them "militarily relevant" or "potential combatants." Similarly, in *Said*, men were targeted through detention and mistreatment on account of their perceived association with combatant roles.

Albeit implicitly, these cases demonstrate what feminist scholars such as Otto[27] have long argued: that gender is relational, and men too can be victimised on account of gendered stereotypes about masculinity and militarisation. Importantly, this recognition shows that persecution "on gender grounds" need not

[25] *Prosecutor v. Said*, ICC-01/14-01/21, International Criminal Court, Public Redacted Version of 'Warrant of Arrest for Mahamat Said Abdel Kani' 2 (7 January 2019).
[26] *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (Ali Kushayb), ICC-02/05-01/20, International Criminal Court, ongoing proceedings. In this case, the Pre-Trial Chamber held that men were targeted based on the assumption that they were all potential soldiers, based on traditional notions of gender roles.
[27] D. OTTO, *Queering Gender [Identity], op.cit.*

collapse into a simplistic male/female binary but can capture the complex ways in which gender roles render particular groups vulnerable.

At the same time, *Abd-Al-Rahman* and *Said* remain exceptions. The fact that *Al Hassan* is the only case addressing gender persecution of women (despite widespread evidence of such persecution in conflict) speaks to the ICC's caution.[28] The uneven record highlights a broader reluctance to use gender persecution charges under Article 7(1)(h). Absent clearer treaty guidance, the risk remains that such charges will only be pursued in exceptional cases with overwhelming evidence, rather than as a routine prosecutorial tool.

4.3. Evidentiary challenges

The evidentiary difficulties inherent in prosecuting gender-based crimes compound these risks.[29] Crimes such as forced marriage, the family ostracism of non-binary individuals, or the denial of healthcare services to transgender persons may fail to meet evidentiary standards without a codified understanding of gender as a socially constructed category. As UNODC has observed,[30] such crimes often occur in private or intimate settings, relying heavily on testimonial evidence that is often shaped by trauma-related inconsistencies or victim retraction due to fear of retaliation or societal stigma. Without a clear legal framework affirming the validity of diverse gendered experiences, victims' testimonies may be discounted or dismissed.

This creates a vicious cycle. Ambiguity in treaty language discourages prosecutors from bringing expansive charges; the absence of charges reinforces narrow judicial interpretations; and restrictive jurisprudence further deters prosecutors. By contrast, where courts have embraced inclusive approaches, as in Colombia's Special Jurisdiction for Peace, non-definition has enabled progressive outcomes.

As Oosterveld warned, definitional compromises that appear to preserve openness may in practice entrench restrictive interpretations, creating a chilling effect on the prosecution of gender-based crimes.[31] Unless the CAH treaty provides interpretive guidance, non-definition risks limiting prosecutions and undermining victims' access to justice.

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[28] It is telling that it took until 2019 (in *Al Hassan*) for charges of gender persecution to be brought beyond the Pre-Trial stage, even though the Office of the Prosecutor had publicly committed to prioritising gender-based crimes as early as its 2014 Policy Paper. International Criminal Court (ICC), Office of the Prosecutor (OTP), *Policy Paper on Sexual and Gender-Based Crimes* 3 (2014), available here. The commitment was reaffirmed in the later ICC OTP's *Policy on the Crime of Gender Persecution* 3 (2022), available here.

[29] UNFPA, *State of World Population 2024: Interwoven Lives, Threads of Hope – Ending Inequalities in Sexual and Reproductive Health and Rights*, United Nations Population Fund, New York, 2024, available here.

[30] UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, United Nations Office on Drugs and Crime, Vienna, 2014, available here.

[31] V. OOSTERVELD, *The Definition of "Gender", op.cit.*, pp. 71–72.

5. The impact of non-definition on reparations for gender-based crimes

The absence of a definition of gender in the CAH treaty will not only affect prosecutions but also the design and implementation of reparations. Reparative justice is not limited to material compensation; it encompasses symbolic recognition, the affirmation of victims' dignity, and guarantees of non-repetition. Yet such outcomes depend on legal frameworks that explicitly acknowledge the harms suffered. Where courts interpret gender narrowly, victims who are non-binary, transgender, or queer risk exclusion from reparative schemes.

5.1 The ICC jurisprudence

The ICC's jurisprudence is instructive. In the *Lubanga* case,[32] reparations were confined to the recruitment and use of child soldiers with no recognition of gender-based harms, since they had not been included in the charges. The Appeals Chamber made clear that reparations could not extend to crimes for which there had been no conviction. The result was a framework that reflected the limits of prosecutorial strategy rather than the realities of victims' experiences.

In the *Katanga* case,[33] the Court noted that reparations are a critical element in justice administration and stated that "reparations are intrinsically linked to the individual whose criminal responsibility is established in a conviction."[34] On this ground, the Court established a more stringent standard of intent or a higher evidentiary threshold specifically in relation to Katanga's alleged contribution to rape crimes, compared to other charges. In fact, the Chamber unanimously acquitted Katanga of charges as an accessory to rape and sexual slavery, both classified as war crimes and CAH.

More recently, in *Ntaganda*,[35] the Trial Chamber instructed that reparations must be gender-sensitive and directed the Trust Fund for Victims to design collective measures with symbolic, preventative, and transformative dimensions. This represented an important step forward, but the reparations order still reflected the boundaries of the charges, focusing on sexual violence against women and girls while leaving the experiences of other groups underdeveloped. Without a constructive and inclusive definition, future reparations under the CAH treaty risk reproducing these lacunae.

[32] *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations," ICC-01/04-01/06-3129, Appeals Chamber, 3 March 2015.
[33] *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, Trial Chamber II, 24 March 2017.
[34] *Prosecutor v. Germain Katanga,* ICC-01/04-01/07, Trial Chamber II, 24 March 2017, para 31(4).
[35] *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Trial Chamber VI, Reparations Order, 8 March 2021.

5.2 Challenges and risks

Policy analyses confirm that definitional ambiguity at the drafting stage frequently leads to exclusion at the reparations stage. For instance, the ICC's 2023 Policy on Gender-Based Crimes[36] emphasises survivor-centred, trauma-informed, and intersectional approaches. Although a prosecutorial instrument rather than a reparations statute, it articulates principles that, if mirrored in a CAH treaty's interpretive guidance, would reduce the risk that non-binary or gender-nonconforming victims fall through remedial gaps.

Similarly, civil society analyses[37] warn that definitional ambiguity at the norm-setting stage often translates into exclusion at the reparations stage, especially for victims whose experiences do not map neatly onto binary sexed categories. In contexts marked by democratic backsliding or politicised "anti-gender" campaigns, the risks are compounded. Reparations schemes may be weaponised to privilege narrow "family" roles or heteronormative stereotypes, rather than responding to the full spectrum of gendered harms.[38]

Furthermore, the absence of a definition exacerbates evidentiary barriers. Reparations orders often depend upon group recognition – for example, survivors of sexual slavery as a collective class of victims. Where gender remains undefined, it may be unclear whether such groups extend to individuals persecuted for non-normative identities. Fragmentation across jurisdictions further undermines coherence and equality of treatment: some victims may be recognised in one context while excluded in another, undermining equality of treatment in international criminal law. These inconsistencies undermine equality of treatment in international criminal law, ultimately perpetuating an under-inclusive and inconsistent reparations regime.

5.3 Progressive alternatives

Despite these challenges, comparative transitional justice practices offer promising alternatives. In Colombia, the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz, JEP)[39] has explicitly recognised persecution of LGBTQI+ persons as a form of gender-based harm, not only in its investigative strategies, but also in its approach to reparations.

The JEP has broadened the scope of transitional justice to reflect intersectional experiences of violence. This shows that progressive interpretive environments can translate into innovative forms of reparations. Importantly, as Davidson has shown, the JEP's restorative justice orientation offers distinctive benefits

[36] ICC, *Policy on Gender-Based Crimes*, 2023, *op.cit.*
[37] Madre, CIJUS, CUNY, OutRight, *op.cit.*
[38] C. ROGGEBAND, A. KRIZSÁN, *Democratic Backsliding, op.cit.*
[39] R. URUEÑA, *Perspectives on Gender Persecution: Colombia's Transitional Justice Process,* in *Just Security*, 23 June 2023, available here.

in the gender context: it creates space for survivor participation, acknowledges structural harms, and aspires to social transformation rather than mere compensation.[40]

Critically, the Colombian experience underscores what the draft CAH treaty risks losing through its silence on gender. Feminist and queer legal scholars have shown that such silences do not operate neutrally but reproduce hierarchies of recognition within international criminal law: privileging binary categories of "male" and "female" victims, prioritising so-called public harms (such as killings or forced displacement) over gendered harms (such as sexual or reproductive violence), and selectively recognising victims whose experiences conform to dominant social or cultural expectations while marginalising others at the intersection of gender, race, sexuality, and ethnicity.[41] Without an inclusive and constructive definition of gender, reparations frameworks under the CAH treaty risk replicating these exclusions, leaving significant harms unacknowledged.

A constructive definition of gender would not, by itself, solve all the challenges, but it would provide an indispensable foundation for reparations frameworks that are responsive to the full range of gendered harms. It would also guide reparations bodies in adopting gender-sensitive methodologies, such as participatory processes centred on survivors' voices, recognition of intersectional discrimination, and flexible evidentiary standards to account for stigma and silencing.[42]

6. Towards a constructive definition

In engaging with the ongoing debate around the definition of gender in the draft CAH treaty, I do not claim to offer a definitive or authoritative definition. This is a question that many esteemed feminist scholars and practitioners have grappled with over decades, and for good reason: the complexity of gender – as a social, legal, and political category – resists simple codification. Instead, I aim to contribute thoughtfully to this vital conversation by drawing on feminist legal insights.

In light of the interpretive and practical risks posed by the absence of a definition, there is a tangible danger that future interpretations of the CAH treaty will revert to the Rome Statute's restrictive formulation in Article 7(3). This return is neither politically viable nor normatively desirable, as it fails to address concerns about exclusion or misinterpretation.

One possible safeguard would be to include interpretative guidance in the treaty's *travaux préparatoires* explicitly stating that "gender" is to be interpreted in line with its socially constructed, evolving, context-

[40] C. DAVIDSON, *Gender-Based Crimes and the Colombian Special Jurisdiction for Peace* in *Duke Journal of Comparative & International Law*, Vol. 35 No. 1, 2025.

[41] On how international law reproduces hierarchies by privileging some identities and marginalising others, see R. KAPUR, *Gender, Alterity and Human Rights: Freedom in a Fishbowl*, Edward Elgar, 2020.

[42] E. B. STAVREVSKA, *Enter intersectionality: towards an inclusive survivor-centred approach in responding to conflict-related sexual violence* in *LSE Blog*, 19 December 2022, available here.

sensitive character. This would assist courts in avoiding a reversion to binary or essentialist readings, without requiring negotiators to agree on a fully codified definition.

Where states are willing to entertain a definition, existing international human rights frameworks offer useful and instructive starting points. The Yogyakarta Principles, though not without limitations,[43] exemplify an approach that eschews reductive biological essentialism in favour of conceptualising gender as a lived experience shaped by cultural, social, and political forces. Their explicit recognition of the rights of LGBTQI+ persons advances a social understanding of gender, moving beyond the binary codified in prior legal instruments. Similarly, the UN Free & Equal glossary encourages a shift away from a fixed, dichotomous notion of gender, promoting instead an appreciation of gender as dynamic and intersectional.[44]

As Otto chiefly illustrates, "rather than being anchored in biology, sex and gender should both be understood as the effects of performative and reiterative gender norms (legal, social, symbolic...) which materialise, naturalise, regulate, and discipline sexed bodies and identifications."[45] Butler similarly argues that sex itself is discursively constructed rather than a pre-discursive or pre-cultural constant.[46] Along this line, international criminal law must resist reifying the sex/gender binary that continues to underpin much of its jurisprudence.

Important jurisprudential developments outside the ICC also point the way forward. The Inter-American Court of Human Rights, in its 2017 Advisory Opinion on Gender Identity and Same-Sex Couples, explicitly defined "sex assigned at birth" as a social construct rather than a biological constant.[47] By acknowledging the non-binary character of sex and the subjectivity of legal classification, the Court advanced a framework that resists biologically determinist logics.

Building on these insights, three reforms are particularly important for the draft CAH treaty. First, the treaty should incorporate interpretative guidelines affirming sex and gender both as socially constructed

[43] D. OTTO, *Queering Gender [Identity], op.cit.* See also A. GROSS, *Queer Theory, op.cit.*

[44] Here, gender is defined as "socially constructed identities, roles, and attributes that a society considers expected, appropriate and acceptable for someone according to their sex and the social and cultural meanings attached to biological differences based on sex. In short, gender is a set of behaviours, activities and forms of expression that society expects from people based on their sex. These expectations vary across societies, communities, and groups, as well as over time, and often result in inequality, favouring men and disadvantaging women and other genders, negatively affecting all members of society." *Definitions & terminology on LGBTIQ+ people and human rights"*, UN Free & Equal (United Nations), available here.

[45] D. OTTO, *Queering Gender [Identity], op.cit.,* p. 300.

[46] J. BUTLER, *Gender Trouble, op.cit.* p. 9.

[47] The Court holds that this concept "transcends the concept of sex as male or female and is associated with the determination of sex as a social construct. Sex assignment is not an innate biological fact; rather sex is assigned at birth based on the perception others have of the genitalia. Most individuals are readily classified, but some do not fit within the female/male binary system." *Gender Identity, and Equality and Non-Discrimination of Same-Sex Couples* (2017) Inter-American Court of Human Rights Advisory Opinion OC-24/17, Series A No. 24, para 32(b).

categories, thereby rejecting biological essentialism.[48] This would offer courts judicial tools to interpret gender-based crimes in ways sensitive to lived realities, providing clarity without rigidity.

Second, the treaty must embed participatory and trauma-informed procedures and victim-support structures that protect survivors from secondary victimisation during processes such as cross-examination. Robust institutional infrastructure is as crucial as legal text to resist the persistent influences of essentialist logics, which Otto warns can be reinforced even through well-meaning but tokenistic inclusions of gender.[49]

Third, gender-sensitive training for all prosecutors, judges, and legal practitioners is essential to recognise and effectively prosecute gender-based crimes beyond physical violence, including systemic discrimination and technology-facilitated harassment.

Accordingly, the aim is not to establish a definitive statement of what gender "is," but to prevent regression to binary formulations and to provide interpretive tools that allow courts to recognise a wider spectrum of harms. This entails moving beyond the artificial separation of "sex" and "gender, and acknowledging that both are historically and socially constituted.

By framing gender as an evolving and context-sensitive concept, states can ensure that international criminal law remains capable of addressing contemporary and future forms of harm. Where consensus on such a definition proves politically unattainable, leaving gender undefined – provided it is accompanied by safeguards that preclude reliance on Article 7(3) – is still preferable to codifying an exclusionary binary.

7. Conclusions

The evolving debate over the treatment of gender in the draft CAH treaty reveals a fundamental tension between legal certainty and interpretative openness. By removing the Rome Statute's restrictive definition, the ILC created the possibility for broader and more progressive understandings of gender. Yet this openness is double-edged: it offers opportunities for expansive, intersectional readings of gender-based persecution, but it also risks judicial regression into binary and essentialist frameworks, particularly in conservative jurisdictions.

This article has argued that the most pressing concern for the CAH treaty is to prevent the reintroduction, whether directly or indirectly, of Article 7(3)'s binary formulation. A constructive definition of gender, one that affirms its socially constructed and evolving character, would provide the strongest safeguard

[48] J. BUTLER, *Gender Trouble, op.cit.*

[49] Otto has similarly argued that even well-intentioned inclusions of "gender" within international law often remain tethered to binary, heteronormative assumptions that marginalise those who do not conform to established gender roles. D. OTTO, *Queering Gender [Identity], op.cit.*

against restrictive interpretations. Such a definition need not impose a single, static meaning, but should guide courts to adapt to new social realities and address harms experienced by individuals whose identities do not conform to binary gender categories.

Feminist-queer legal scholarship clarified that both "sex" and "gender" must be understood as historically and socially constituted. Only by rejecting biologically determinist logics can international criminal law evolve beyond its exclusionary roots and adequately address the lived realities of those most vulnerable to structural violence and legal invisibility. A treaty that fails to engage with these insights not only risks reinforcing past shortcomings – it foregoes the possibility of justice for the very individuals it purports to protect.

At the same time, it must be recognised that political consensus on such a definition may not be achievable. Where negotiations stall, leaving gender undefined is still preferable to codifying exclusionary language. In this scenario, safeguards such as explicit guidance in the *travaux préparatoires*, judicial training, and reliance on progressive interpretive human rights frameworks can help ensure that non-definition is read as inclusive rather than restrictive.

The consequences of failing to provide such safeguards are clear. As ICC jurisprudence in *Lubanga*, *Katanga*, and *Al Hassan* demonstrates, ambiguity in the treatment of gender can undermine both accountability and reparations. Victims of gender-based crimes may be excluded from recognition, prosecutions may falter, and reparations may fail to capture the full spectrum of harms. Conversely, where interpretive space has been used progressively, as in the Colombian Special Jurisdiction for Peace, broader recognition has been possible.

Treaty-making in this area is not merely technical but deeply normative. It is a profoundly normative moment in which the international community must decide whether to entrench restrictive binaries or to open space for evolving understandings of gender-based harm. A treaty that achieves the latter would not only strengthen accountability but also affirm the dignity of victims whose experiences have too often been marginalised.

The upcoming negotiations for the CAH treaty present a crucial opportunity to engage deeply with feminist and queer legal scholarship, particularly because the treaty will directly reference gender. The CAH treaty will, like Article 7 of the Rome Statute, explicitly include gender-based crimes among its provisions. However, a treaty that neglects to engage meaningfully with feminist legal insights risks perpetuating existing limitations and foreclosing justice for those most in need of international protection.

Expanding Italy's implementation of the Women, Peace and Security Agenda: Lessons on Gender-aware Reparations from Afghan Women *

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Abstract [En]: Women's specific experiences and redress needs remain under-addressed both nationally and internationally in the recognition and award of reparations. The UNSC Women, Peace, and Security (WPS) Agenda promotes women's protection, participation, and empowerment throughout conflict phases, highlighting their role in peace processes. While Italy's National Action Plans (NAPs) for implementing the WPS Agenda are successful, they remain limited, especially when it comes to the promotion of women and girls' right to education. This paper proposes a broader implementation of the Agenda by analyzing a reproducible good practice: the 2024 Afghan Girls Training Project, a gender-aware reparation initiative developed by Monash University in response to the Taliban's restrictions on education for women and girls in Afghanistan.

Titolo: Ampliare l'attuazione dell'Agenda Donne, Pace e Sicurezza da parte dell'Italia: lezioni sulle riparazioni sensibili al genere dalle donne afghane
Abstract [It]: Le esperienze specifiche delle donne e i loro bisogni di riparazione continuano a essere insufficientemente affrontati, sia a livello nazionale che internazionale, nel riconoscimento e nell'attribuzione delle riparazioni. L'Agenda del Consiglio di Sicurezza delle Nazioni Unite su Donne, Pace e Sicurezza (WPS) promuove la protezione, la partecipazione e l'*empowerment* delle donne in tutte le fasi del conflitto, evidenziandone il ruolo nei processi di pace. Sebbene i Piani d'Azione Nazionali (PAN) dell'Italia per l'attuazione dell'Agenda WPS abbiano avuto successo, essi restano limitati, in particolare per quanto riguarda la promozione del diritto all'istruzione delle donne e delle ragazze. Questo contributo propone un'attuazione più ampia dell'Agenda attraverso l'analisi di una buona pratica replicabile: l'*Afghan Girls Training Project*, un'iniziativa di riparazione sensibile al genere sviluppata dall'Università di Monash nel 2024 in risposta alle restrizioni imposte dai Talebani all'istruzione delle donne e delle ragazze in Afghanistan.

Keywords: Women, Peace and Security Agenda; reparations; gender; Italian National Action Plan; Afghan women.
Parole chiave: Agenda Donne, Pace e Sicurezza; riparazioni; genere; Piano d'Azione Nazionale italiano; donne afghane.

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* Peer reviewed.

1. Introduction

Reparations to violations of human rights and their implementations in post-conflict settings have come a long way since the idea was first concretely conceived in the restorative efforts of the South African post-apartheid Truth and Reconciliation Commission[1]. The examples of remedial initiatives are diverse. On a national level, many successful programs are of note, such as the Brazilian *Comissão Nacional da Verdade*[2], established in 2011 to promote national reconciliation and investigate the abhorrent crimes committed in the territory from 1946 to 1988, which includes the period of military dictatorship that controlled the country from 1964 to 1984[3].

On a regional scope, many legal instruments of international human rights law in Europe, America and Africa deal with the matter. For instance, the European Convention on Human Rights demands "just satisfaction to the injured party" in its article 41 and states that violations "shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity" in its article 13[4]. In addition to that, both the American Convention on Human Rights[5], which founded the Inter-American Court of Human Rights and its Commission, and the Protocol to the African Charter on Human and People's Rights[6] follow suit.

The initial dominant understanding on this matter stemmed from the cannon of public international law, which at the time deemed that only States, namely the main subjects of international law, could be found liable of redress to victims of internationally wrongful acts committed by them in violation of international obligations to which they were bound. However, this standard was challenged through the

[1] The South African Truth and Reconciliation Commission (TRC) was established in 1995 with the goals of investigating and uncovering human rights abuses committed during the Apartheid regime and promoting national healing and unity. Although critiques are made to the amnesties which the TRC system granted for perpetrators who came forward about politically motivated crimes, the South African experience remains a pioneering example and an important framework for national reconciliation and the promotion of the right to the truth for victims of human rights violations. See official website for the South African Truth and Reconciliation Commission.

[2] See official website for the Brazilian *Comissão Nacional da Verdade*.

[3] The work of the *Comissão Nacional da Verdade* (CNV) remains fruitful to this day, especially when it comes to memorializing and honoring the victims of human rights violations in Brazil. For instance, the information uncovered by the commission about the abduction, torture and forced disappearance of political prisoners during the Brazilian military dictatorship allowed Marcelo Rubens Paiva, a prolific Brazilian novelist, to write the book 'I'm Still Here' about his mother's efforts to find his father, the ex-congressman Rubens Paiva, who was taken into custody for questioning by State forces in 1971 in Rio de Janeiro never to be seen again. The book was adapted into a homonymous movie which won Brazil its first ever Oscar award in early 2025.

[4] See Council of Europe, European Convention on Human Rights for the full text.

[5] According to art. 63.1 of the American Convention on Human Rights, "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party".

[6] Art. 27.1 of the Protocol to the African Charter on Human and People's Rights reads: "if the court finds that there has been violation of a human or people's right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".

development of new legal doctrines in scholarship and in practice through different branches of the law – international human rights law, public international law, humanitarian law, and international criminal law. These ensued the consolidation of a clearer and broader benchmark on the definition and enforcement of reparations which comprises the inclusion of a direct right to redress on the part of the victims as well as the establishment of individual criminal responsibility for the practice of said violations. The initial seeds for this shift were planted within the field of international criminal law by *ad hoc* International Criminal Tribunals, mainly the ICTY (International Criminal Tribunal for the former Yugoslavia) of 1993 and the ICTR (International Criminal Tribunal for Rwanda) of 1994. While the previous experiences of the Nuremberg and Tokyo trials failed to even mention victims, these tribunals at least recognized victims' interests and the harm they suffered. However, the Statutes of both the ICTY and the ICTR proved insufficient by not going beyond highlighting victims' relevance as witnesses and indirect contributors to the proceedings and by not establishing a reparations mechanism which victims could access[7].

Later, this push was consolidated by the 1998 Rome Statute[8], which created the International Criminal Court (ICC), and by the 2005 United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law[9], which, despite not generating new obligations, identified and clarified pre-existing legal rules. Indeed, one of the most meaningful advances brought about by these two documents, in conjunction with the work of feminist theories, was a change in paradigm which moved States, along with their prerogatives and duties, out of the spotlight in order to place victims' agencies and their individual rights to reparations in the center of the issue[10].

For instance, the Rome Statute included individuals as subjects of international law by allowing direct personal criminal responsibility for people accused of four serious crimes which are thought to concern the international community as a whole: genocide, crimes against humanity, war crimes, and the crime of aggression[11]. Here, article 75 entitles victims to three reparation methods – restitution, compensation and

[7] For instance, the only mention to reparations made in the Statutes is in reference to restitution. The caveats, however, are that the Tribunals themselves do not have the power to award compensation, that States' responsibility is to impose the obligation of restitution to the liable individuals, and that only the Prosecutor or the Chamber can initiate requests for restitution, not the victims. C. EVANS, *Reparations for Victims in International Criminal Law*, in *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge University Press, Cambridge, 2012, pp. 86-124.

[8] See full text of the Rome Statute.

[9] See United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[10] M. C. VITUCCI, *La Reparación de las Violaciones de Derechos por Motivo de Género como Instrumento de Construcción de la Realidad Social*, in A. G. MERINO (a cura di), *Sesgos de género em la educación: propuestas teórico-práticas de coeducación em la universidad*, Colección Educación Universitária, Barcelona, 2024, pp. 77-85.

[11] See art. 5 of the Rome Statute.

rehabilitation – which are to be managed either by the convicted person or by the Trust Fund for Victims whenever the latter does not have the means to comply. Later judgements by the ICC also included symbolic, transformative and preventative measures to this roll, always following the premise that the decisions on "the scope and extent of any damage, loss and injury to, or in respect of, victims" are prerogatives of the Court[12].

Concurrently, the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law gave more thorough information on key elements of reparations, such as who can be victims[13], and defined five distinct types of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition[14]. As stated by the doctrine, these forms of requital shall be guided by three main principles: primacy of restitution, or the intention to place the victim back in the position they would have been had the violations not occurred; proportionality, which is the establishment of a commensurable connection between the harm suffered and the reparation to be awarded; and causality, or the need for a direct link between the wrongful act which caused the violations and the actual harm endured by the victims[15].

Another distinctive method of remedy which has been gaining traction in social and legal discourse despite a lack of an officially binding definition is transformative reparations. It arises based on the belief that true and just reparations to violations of international human rights law and international humanitarian law cannot be truly effective if they do not approach the root causes of the harms, going beyond a simple reinstation of the previous *status quo* and achieving, instead, a new and better lived experience for the victims[16]. This concept was introduced in the global legal rhetoric in 2007 through the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation[17] and was later officially

[12] See art. 75 of the Rome Statute.

[13] Art. V.8 defines victims as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law". This definition also encompasses "the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization".

[14] See art IX of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law for definitions of each form of reparation mentioned.

[15] F. CAPONE, K. HAUSLER, D. FAIRGRIEVE, C. MCCARTHY, *Education and the Law of Reparations in Insecurity and Armed Conflict: a summary*, British Institute of International and Comparative Law, 2014, pp. 1-25.

[16] R. RUBIO-MARÍN, *Reparations for Conflict-Related Sexual and Reproductive Violence: a Decalogue*, in *The William & Mary Journal of Women and the Law*, n. 19, 2012-2013, pp. 69-104.

[17] The Nairobi Declaration was the result of the tireless work of women's rights activists and advocates. It involved more than 30 NGOs from all over the world and focuses on the recognition of reparations for victims of conflict-related sexual and gender-based violence as an essential aspect of transitional justice. See full text of the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. For more on the importance and content of the

inserted in the practice of the Inter-American Court of Human Rights in the *Cotton Fields* Case, as well as in the jurisprudence of the International Court of Justice[18].

Unfortunately, despite these advances, there are still many challenges to be faced in the realm of reparations, including, *inter alia*, the actual recognition of violations of international human rights law and international humanitarian law, the assessment of the harms caused, the identification of victims, the methods and procedures through which reparations are to be awarded, and the best remedy for each situation. Additionally, the current state of geopolitical animosity shows that, although a concerted effort is made to both discourage the resolution of controversies with the use of armed force and to promote and maintain peace through established diplomatic, legal and non-judicial channels, armed conflict and military unrest are still all too present. These are scenarios in which those most vulnerable to intersecting types of violence, which includes women and girls, are also the most affected.

In light of that, this paper aims at exploring Italy's implementation of one of the most significant international instruments for the protection of the human rights of women and girls before, during and after conflicts – the United Nations Security Council (UNSC) Women, Peace and Security (WPS) Agenda – in order to sustain that the country's scope of action can be broadened to serve as an outlet for third-party gender-sensitive reparations by borrowing inspiration in the relentless initiatives promoted by Afghan women.

In order to do that, this paper first localizes of gender in the reparations discourse, and subsequently explains both the WPS Agenda and the Italian engagement with it, highlighting the country's important role in the world stage and how it can contribute to the empowerment of women and girls in conflict and post-conflict scenarios, especially by focusing on expanding its goal of promoting women and girls' right to education. Lastly, it contextualizes the current plight of Afghan women under the Taliban regime and details a specific initiative which can serve as inspiration for changes to the Italian WPS framework of action: the Monash University 2024 Afghan Girls Training Project.

2. Finding the gender needle in the reparations haystack

The protection of the human rights of women and girls in times of peace is established in a plethora of covenants of public international law, the most prominent of which are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[19] of 1979 and the Istanbul

Declaration, see: V. COUILLARD, *The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence*, in *International Journal of Transitional Justice*, v. 1, n. 3, December 2007, pp. 444–453.

[18] J. O'DONOHUE, R. GREY, *'Gender-Inclusivity' in the International Criminal Court's First Reparations Proceedings*, in *Gender and international Criminal Law*, Oxford University press, Oxford, 2022, pp. 291-323.

[19] The CEDAW, which is often described as the international bill of rights for women, was the first international document to focus specifically on the human rights of women and girls, highlighting, through a gender-sensitive

Convention, or the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence[20], of 2011. However, these safeguards, along with the many other legal devices which work towards the same end, are not enough to prevent women and girls from being subjected to multi-levelled violence and, more often than not, measures aimed at redressing said harms fail at contemplating their specific needs. In practice, women are often dismissed when it comes to reparation processes and repeatedly struggle with judicial systems which tend to discredit or disregard their complaints in what is known as secondary victimization. This phenomenon, which has an unfortunately very broad scope, is especially common when it comes to sexual and reproductive violences (SRV), due to the stigma often associated with crimes of this nature.

Well known examples of the hurdles on the way of gender-sensitive reparations can be found in the jurisprudence of the first reparations proceedings of the International Criminal Court. For instance, in its first reparation order, issued in 2012 in the *Lubanga* case, the acts of sexual violence allegedly committed by Thomas Lubanga Dyilo's militia were not considered for reparations as they were deemed outside of the scope of the acts for which Lubanga was criminally responsible. Redress measures also took a long time to be executed, which meant, for example, that former girl soldiers who had children as a result of rape bore the burden of raising said children without institutional support and, in many occasions, facing ostracism and shame[21].

Similarly, the second ICC reparations order also failed to include the damages resulting from crimes of sexual violence committed during Germain Katanga's attack on the Bogoro village in the Democratic Republic of Congo. In the *Al Mahdi* case[22], the third instance in which the Court announced reparation orders, the absence of a gendered approach is even more nuanced and disappointing. Ahmad Al Faqi Al Mahdi was found guilty of being a co-perpetrator of war crimes for targeting religious and historic buildings in Timbuktu, Mali, and the Trial Chamber of the Court decided that individual compensation for economic loss was due solely to those whose livelihood depended direct and exclusively on the destroyed buildings. This standard was more attainable to men, seeing as at the time of the attacks only women who had reached menopause were allowed into the religious buildings. In practice, this meant that those in the community who made a living profiting from religious tourism outside the holy sites,

approach, the needs and challenges faced by them because of their gender. Amongst its many contributions, which are complemented by the work of the CEDAW Committee, it is possible to highlight the definition of sex and gender-based discrimination, as well as gender-based violence. See full text of the Convention on the Elimination of Every Form of Discrimination Against Women. For more on the CEDAW, see: M. PINTO, *Human Rights and Women's Rights*, in *The Oxford Handbook of Women and International Law*, Oxford University Press, 2025, pp. 199-214.

[20] See full text of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

[21] J. O'DONOHUE, R. GREY, *'Gender-Inclusivity'…*, *op.cit.*, pp. 291-323.

[22] For all court records on the cases mentioned, including the reparation orders, see the official ICC website pages for the Lubanga, Katanga and Al Mahdi cases, respectively.

which was the most feasible labor option for women given their impediment, were deemed unqualified to access the proposed measures despite having suffered concrete harms[23].

These examples, chosen among many in local, regional and international ambits, are perfect arguments for the urgency of a gender-inclusive approach to reparations. That is because the idea of remedies, while arguably the most victim-centered mechanisms of transitional justice to confront rights violations, has yet to reach its full cathartic potential.

In view of that, it is important to state that reparations can be considered gender-aware when they include women and girls in every step of the process, not just in the awards to be received. Both the Nairobi Declaration[24] and the UN Secretary General's 2014 Guidance Note on Reparations for Conflict-Related Sexual Violence[25] concur that, when measures fully contemplate women and girls victims' specific needs and wants, participation becomes a form of reparation in itself as it gives them agency over their struggles and their future.

This is precisely why strong arguments are made in favor of the importance of complementing standard reparations measures with actual transformative initiatives in the cases of gender-based crimes in what is known as a "combination approach". Given how patriarchal *ethos* is ingrained in multiple societies, it is likely that harms directly aimed at women and girls cannot be redressed by a simple direct return to the *status quo ante*, seeing as the prior standard of living was likely to include harmful stereotypes, practices and customs which gave leeway for the violations to happen in the first place[26]. In other words, at times, what can formally look like gender equality might not actually translate into substantive gender equality if it is not accompanied by a shift in perspective. This means that, in order for reparations to be both gender-sensitive and effective in remedying the damages suffered by women and girls, they need to be "carefully designed to evade, contest or subvert patriarchal norms that disempower or disadvantage women"[27].

3. Contextualizing the UNSC Women, Peace, and Security Agenda

The Women, Peace, and Security (WPS) Agenda, established in 2000 through the adoption of the Resolution 1325 by the United Nations Security Council (UNSCR 1325)[28] and later complemented by

[23] J. O'DONOHUE, R. GREY, *'Gender-Inclusivity'…*, *op.cit.*, pp. 291-323.
[24] Art. 2-B of the Nairobi Declaration reads: "Full participation of women and girls victims should be guaranteed in every stage of the reparation process, i.e. design, implementation, evaluation, and decision making".
[25] Section A-6 of the Guidance Note reads: "Meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations should be ensured".
[26] M. URBAN WALKER, *Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-just Reparations*, in *International Journal of Transitional Justice*, n. 10, 2016, pp. 108-125.
[27] *Ibid.*, p. 109.
[28] See full text of the UNSC Resolution 1325.

many others[29], emerged amidst a boom of international documents addressing the protection of international human rights law. Some of the most prominent charters which paved the way for this discussion are the Geneva Convention of 1949 and its Additional Protocols of 1977, for matters of international humanitarian law, and the CEDAW, for general international human rights. The Agenda is also a result of an international movement born in the 1970s which challenged legal and cultural discriminatory practices against women and, as such, offered a specific focus on the protection and empowerment of women and girls before, during and after conflicts, placing gender-sensitive reparations in its core mission.

In the span of 25 years prior to the establishment of the WPS Agenda, four main conferences were held by the United Nations on the matters it comprises: the UN Conference in Mexico City in 1975, the UN Conference in Copenhagen in 1980, the UN Conference in Nairobi in 1985, and the UN Conference in Beijing in 1995[30]. The latter dealt specifically with women in conflict and introduced two important concepts to the legal discourse: *empowerment*, which is the elimination of any obstacle to the participation of women in every aspect of life (social, cultural, economic, and politically), and *gender mainstreaming*, which is the introduction of a gender-sensitive approach to every discussion, consciously considering how decisions specifically affect men and women differently[31].

The WPS Agenda applies these concepts through a holistic approach to the establishment and maintenance of peace with four pillars: participation, conflict prevention, protection, and relief and recovery. The first one concerns the engagement of women in decision processes at every level, as well as their presence in ground operations and as representatives. The second one deals with the incorporation of a gender perspective when addressing root causes of conflict in order to avoid their re-emergence, in similarity with the ideas of transformative reparations. Protection aims to implement the laws and conventions on the human rights of women and girls, as well as to push for the reporting and prosecuting of gender-related violence. Lastly, the pillar of relief and recovery focuses on providing access to essential services for survivors, such as counselling and healthcare[32].

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[29] Currently, the WPS Agenda comprises of 10 UN Security Council Resolutions: Resolution 1325 (2000), Resolution 1820 (2008) on sexual violence as an obstacle for peace and international security, Resolution 1888 (2009) also on sexual violence with the addition of justice for survivors, Resolution 1889 (2009) on participation and the need for women's participation in post-conflict, Resolution 1960 (2010) on violence repression, Resolution 2106 (2013) on prevention of violence and reintegration of survivors, Resolution 2122 (2013) on participation, information and monitoring, Resolution 2242 (2015) on financing and implementation of the agenda, Resolution 2467 (2019) on protection of survivors and the establishment of a working group on WPS, and Resolution 2493 (2019) on implementation of the Agenda in light of its 20th anniversary.

[30] M. PINTO, *Human Rights and Women's Rights*. In *The Oxford Handbook of Women and International Law*, Oxford University Press, 2025, pp. 199-214.

[31] For reference, see *Gender Mainstreaming: A Global Strategy For Achieving Gender Equality & The Empowerment Of Women And Girls*, by UN WOMEN.

[32] PeaceWomen, *Women, Peace and Security National Action Plan Development Toolkit*, 2013, pp. 1-24.

The agenda promoted the consolidation of two important international norms: the prohibition of sexual violence in conflict and gender inclusive participation in peace processes. In fact, it is possible to state that the WPS Agenda, by seeking to transform how international peace is achieved and maintained, promoted an intervention to the patriarchal structures and approaches to militarized methods of achieving security[33]. It provided women with the titles of peacemakers, acting to stop an ongoing conflict, usually through diplomatic efforts; peacekeepers, working on preventing of the reoccurrence of aggression after conflicts through the creation of conditions for lasting peace; and peacebuilders, through the creation of mechanisms of conflict resolution through structural change with focus on the root of conflicts[34].

This broadening of women's direct activity stems from the recognition that female participation is adamant for any lasting solution to local, regional or international controversies, with benefits ranging from the improvement of support for local women to a higher level of reflection and responsibility on the part of men peacekeepers[35]. It is also derivative from the acknowledgement that women need to be directly involved in peace talks to ensure their experiences are taken into consideration. As explained by Sheri Labenski, "survivors are best able to determine priority needs and the ways to ensure their delivery"[36].

Here, it is important to state that the Agenda is evolving over time. For instance, there is still heavy criticism of the assumption of women as victims throughout the UNSC resolutions which compose it. However, even critics acknowledge that the evolution of the Agenda is occurring in the direction of progress. For example, Tamsin Phillipa Paige, Stacey Henderson and Joanne Stagg, when discussing the invisibility of female perpetrators of human rights violations, highlight that, although the Agenda started by reinforcing the idea of women as victims in need of protection, Resolution 1889 moved the conversation forward by viewing women as active bringers of peace, increasingly recognizing their agency and the power of their contributions to peace talks, as well as the importance of their active participation[37].

Moreover, since the thematic documents which make up the WPS Agenda are not binding and, thus, have limited judicial efficacy with no coercive nature, States are expected to voluntarily implement the

[33] F. AKBARI, J. TRUE, *Women, Peace, and Security in Afghanistan: Resistance and Resilience*, De Gruyter, 2025.
[34] For more detailed definitions, see *Terminology*, by United Nations Peacekeeping.
[35] E. RUDBERG, *The Importance of Meaningful Participation of Female Peacekeepers*, in *Women in International Security*, 2023.
[36] S. LABENSKI, *The Right to Reparations for Sexual and Gender-based Violence*, LSE Centre for Women, Peace and Security, 2020, p. 23.
[37] The authors make very pertinent critiques on the shortcomings of the Agenda, which are also voiced by Afghan human rights activists. See: T. P. PAIGE, S. Henderson, J. STAGG, *Women, Peace and Security: Getting Women in the Room is a Start Not an End Goal*, in *The Oxford Handbook of Women and International Law*, Oxford University Press, 2025, pp. 297-312.

principles promoted by the Agenda in good faith. In light of that, there have been many pushes for its implementation and enforcement, among which the appointment of a Special Representative of the Secretary-General focused on addressing sexual violence in conflict, established by the UNSCR 1888 (2009).

An important step, however, came from the Recommendation N. 30 of the Committee on the Elimination of Discrimination Against Women from the CEDAW, which dwells on women in conflict prevention, conflict and post-conflict. This Recommendation states three very important points. Firstly, that reports made by signatory States on the implementation of the Convention, an obligation under article 18 of the text, should also include information on the implementation of UNSC Resolution 1325 (2000) and complementary resolutions. Secondly, the Committee urges States to follow a set of global indicators of compliance with the WPS Agenda and to adopt National Action Plans (NAPS) specifically tailored to its implementation within the States' apparatus. Lastly, the importance of reparations is reiterated, with emphasis on the fact that no transitional justice initiative is fully successful if it does not consider how violations of human rights are interdependent, which means that "for most women, post-conflict justice priorities should not be limited to ending violations of civil and political rights but should include violations of all rights including economic, social and cultural rights"[38].

Furthermore, it is important to mention that, although implementing United Nations' Resolutions is a direct responsibility of the States, the participation of groups and members of civil society in this process is essential. This much is clear when it comes to the elaboration, implementation and monitoring of the NAPs, which should "reflect the holistic intention of SCR 1325 and WPS (Participation, Protection, and Conflict Prevention); be measurable, include a dedicated budget, indicators/output results, set timeframes and plan periods; have a participatory, transparent process of drafting, implementation and monitoring involving civil society and women's organizations; and focus on the prevention of conflict, extending to the regulation of the arms trade and disarmament to fully remedy violations of women's human rights in conflict"[39].

Given the fact that not every country which supports the WPS Agenda is undergoing conflicts, an important aspect of its implementation is the cooperation between States in order to aid women and girls facing severe hardships and human rights violations in areas experiencing unrest. Considering this, it is important to understand Italy's commitment to the Agenda and how it can use the promotion of the education of women and girls as a tool to foster and maintain female empowerment and autonomy, especially in light of the publication of its new NAP, valid for the 2025-2029 period.

[38] Committee on the Elimination of Discrimination Against Women, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, United Nations, October 18, 2013, p. 21.
[39] PeaceWomen, *Women, Peace…*, *op.cit.*, p. 8.

4. The Italian implementation of the WPS Agenda and the right to education as a point of expansion

It is safe to say that Italy is one of the countries in the forefront of the elaboration, projection and implementation of the WPS Agenda. Even though it does not have recent history of conflicts within its territory or with other States, it is an important and respected actor in peacekeeping and mediation in the international community with five National Action Plans published so far, the latest in effect from 2025 to 2029[40].

The fourth Italian NAP (2020-2024) was prepared amidst the COVID-19 pandemic, taking into account the specific challenges this event posed for women and girls. The document was developed through the Interministerial Committee of Human Rights (CIDU, acronym in Italian) of the Italian Ministry of Foreign Affairs and International Cooperation (MAECI, acronym in Italian), along with meaningful and consistent contributions from organizations from civil society, such as WIIS (Women in International Security), AICS (Italian Agency for Development Cooperation), and Women's International League for Peace and Freedom Italy (WILPF). This NAP follows the holistic approach of the WPS Agenda by implementing it through the building and establishment of grassroots activities to foster peace and gender-awareness in many different scopes, including the promotion of multi-level education on gender and human rights.

The international ambit of action of the Italian enactment of the WPS Agenda is stated from the very beginning of its fourth NAP, specifically in its Objective No. 4, which asserts the country's aim to "(…) strengthen strategic communication and result-oriented advocacy, by bolstering the Italian participation in relevant fora, conferences and mechanisms (e.g. UN system, Red Cross, OSCE, NATO, EU, OECD, Council of Europe), to further support the implementation of the WPS Agenda while continuing to ensure the enhancement of information and training at all levels, on the various cross-cutting issues of UNSCR 1325 (2000), in particular for the personnel participating in peace operations, including by increasing synergies with civil society and universities, in order to effectively implement UN Security Council Resolution 1325 (2000) and the WPS Agenda"[41].

The fourth Italian NAP covers a vast array of topics, such as gender-responsive approaches to peace operations within the Italian armed and police forces, supporting women's roles in mediation, peacebuilding, disarmament and reintegration, and points to the importance of the promotion and

[40] In June 2024, the Interministerial Committee of Human Rights of the Italian Ministry of Foreign Affairs and International Cooperation announced that they started working on the drafting of Italy's fifth NAP and in July 2024 there was a public call for input and consultancy from civil society and the public administration. On August 6, 2025, the V Italian NAP was made public.

[41] Italy's Inter-ministerial Committee for Human Rights, *Italy's IV Plan of Action on Women, Peace and Security (2020 – 2024), in accordance with UN Security Council Resolution 1325 (2000)*, 2020, p. 4.

protection of the rights of women and girls to access education throughout its entire text. Specifically, education-related goals focus on equipping institutions of higher education, as well as stakeholders who directly interact with women and girls in conflict and post-conflict contexts, with the contents of the Agenda. For example, point 4.1 of Objective N. 4 details Italy's commitment to "Develop with CSOs, Universities, private sector and media, a strategic communication campaign, including through new social media and relevant conferences and/or meetings, to disseminate information related to all the issues of the WPS Agenda, both among stakeholders and wider audiences, especially young women and men, boys and girls; and likewise, strengthen human rights education with the inclusion of WPS-related topics"[42]. The same rationale can be found in actions 4.8[43], and 4.12[44]. This means that, in its fourth version, the Italian NAP directed its education-related efforts to matters immediately related to the Agenda itself.

Notably, this goal is executed with great success with the aid of an academic network composed of numerous Italian NGOs and universities, which are encouraged to include interdisciplinary courses on the Agenda and Agenda-related issues to their curriculums. For instance, not only does the Sapienza Università di Roma hold an annual advanced training course solely focused on Women, Peace and Security[45], but it has also properly included a subject on the WPS agenda to some of its Bachelor's curriculum. Another example is the "Women Peacebuilders in Action" project promoted by the *Un Ponte Per* NGO in partnership with various stakeholders from Italy (including MAECI), Iraq, Lebanon, Libya, and Tunisia[46]. Its goal was to promote the active participation of women and young people from civil society in peace processes and nonviolent conflict resolution in Italy, the Middle East and Northern Africa, mainly through the promotion of capacity building for the OSCs (Civil Society Organizations, acronym in Italian) based on a fixed methodological curriculum created collectively[47].

Although such actions are undeniably and urgently needed, experiences such as the good practice to be presented in the following section show that this goal should be broadened in order to include the

[42] See action 4.1.

[43] Action 4.8 reads: "Extend, within the framework of WPS-focused training, the systematic inclusion of modules, which deal with the differential impact of armed conflicts on women and children, in particular girls - also in light of the inter-university network, Universities Network for Children in Armed Conflict, on children in armed conflict - as well as codes of conduct and cultural awareness on WPS; IHRL and IHL; gender equality; causes consequences, and combating sexual and gender-based violence, in all training courses for civilian, military and police staff of all ranks deployed to conflict zones."

[44] Action 4.12 reads: "Promote specific training and the dissemination of the WPS Agenda-related issues among university students and young people, through the provision of dedicated teaching and training courses within the relevant degree and post-graduate courses - also aiming at a more systematic involvement of other university disciplines (e.g. anthropology, sociology and psychology)."

[45] For information on the course offered by the Sapienza Università di Roma, see official website.

[46] More specifically, the Centro Studi Difesa Civile – APS in Italy; the DAK Organization for Ezidi Women Development, the DOZ, and the Youth Bridge Development Organization in Iraq; the Fighters for Peace and the Permanent Peace Movement in Lebanon; the Libyan Legal Aid Organization in Libya, and the Fondation Lina Ben Mhenni in Tunisia.

[47] See *Progetto "Women Peacebuilders in Action!" (giugno – novembre 2023)*, by the Centro Studi Difesa Civile.

promotion of women and girls' right to general education as well, especially since women's basic right to schooling is often one of the first to be denied in contexts of armed distress. This necessity is made clear by many investigations on the topic conducted by reliable institutions such as the World Bank, which published a report from 2023 pointing that girls in conflict settings are 2.5 times more likely to be out of school than girls not in these contexts. In addition to that, girls are 90% more likely to be out of school in fragile, conflict, and violent settings at the secondary school level while 50% (around 68 million) of all girls who are out of school across the world live in these settings[48].

This perspective is also corroborated by extensive doctrine on how education can be a target to violations of human rights and on how it can be used as a reparation measure. In fact, much like participation as reparation, promoting education as a remedial initiative can strengthen other measures of redress since it directly empowers victims by fomenting their individual development and, hopefully, their abilities to exercise their rights[49].

Education-based reparations are usually seen as rehabilitating and can take many forms, ranging from the offering of scholarships and the exemption of tuition payments to the reconstruction of school buildings, and reinstatement of educators and students[50]. What several concrete and successful examples of the implementation of such measures show is that education is a perfect instrument for transformative reparations, if done correctly. Here, it is important to make sure that the education being promoted is suited for confronting inequalities and systems of oppression, not reinforcing them. That might mean that, at times, reparations might need to recreate an educational standard rather than simply restoring it[51].

This wider take on the promotion of education can already be found in NAPs of countries such as Afghanistan itself, which declared increasing access to education and higher education for girls and women, particularly for the internally displaced persons and returnees, as one of its last NAP's main goals[52]. From an Italian perspective, however, an analysis of the country's NAPs shows a different scenario. That is because, although academia has usually been included as a stakeholder, it was only in the 2016-2019 NAP, Italy's third one, that education was included as part of an actual national policy. Even then, it consisted only on the mapping of civilian and military education, on training courses on Women, Peace and Security available in Italy and abroad, and on the development of complementary

[48] R. BENTAOUET KATTAN, M. MURAD KHAN, *Girls' education in conflict is most at risk: here's how to reach them*, in *Word Bank Blogs*, March 12, 2024.
[49] F. CAPONE, K. HAUSLER, D. FAIRGRIEVE, C. MCCARTHY, *Education and the Law...*, *op.cit.*, pp. 1-25.
[50] S. D. ASSAMOI, *The Issue of Education in Post-Conflict Reconstruction through the Transitional Justice Process: The Case of Côte D'Ivoire*, in *Frontier in Education Technology*, v. 3, n. 4, 2020, pp. 141-164.
[51] J. PAULSON, *(Re)Creating Education in Postconflict Contexts: Transitional Justice, Education, and Human Development*, International Center for Transitional Justice, 2009.
[52] Afghanistan's Ministry of Foreign Affairs, Directorate of Human Rights and Women's International Affairs, *Afghanistan's National Action Plan on UNSCR 1325 – Women, Peace, and Security*, 2015.

efforts targeted at security forces on issues related to Women, Peace and Security in the post-conflict phase[53].

This finding in itself, when contrasted to the bigger space education took up in Italy's fourth NAP, shows the country's growing commitment to education as a human right and as a tool for female empowerment, while unveiling the room and need for expansion. Unfortunately, despite this step forward, the country's fifth and latest NAP did not take the necessary leap on this matter, seeing as the document still portrays a rather limited scope of action regarding education by focusing solely on "promoting awareness-raising actions and the dissemination of knowledge related to the sector"[54].

This approach is reproduced throughout the entire fifth NAP. Its Objective N. 4[55] displays very similar wording to the one present in the previous document, with the addition of "research" as an area where synergy should be enhanced[56]. Italy's education-related proposed actions are more thoroughly detailed in point 4.1[57], 4.2[58], 4.6[59] and 4.8[60], all reinforcing that the aim is to promote education specifically on Agenda-related issues.

Given how important access to education is to the empowerment of women and girls, especially in conflict-affected contexts, it is adamant that Italy rethinks its approach in order to consider expanding

[53] Italy's Inter-ministerial Committee for Human Rights, *Italy's Third National Action Plan, in accordance with UN Security Council Resolution 1325(2000), 2016 – 2019*, 2016.

[54] Quote originally written in Italian as: "(…) promuovendo azioni di sensibilizzazione e la diffusione della conoscenza di settore." Italy's Inter-ministerial Committee for Human Rights, *V Piano D'Azione Nazionale su Donne Pace e Sicurezza (2025-2029), in attuazione della risoluzione del Consiglio di Sicurezza 1325 (2000)*, 2025, p. 8.

[55] It reads: "To consolidate the promotion of strategic communication and awareness-raising actions, strengthening Italy's participation in conferences and sectoral mechanisms (e.g. United Nations system, Red Cross, OSCE, NATO, EU, OECD, Council of Europe), in order to further support the implementation of the DPS Agenda, while at the same time ensuring the consolidation of information and training at all levels on the various cross-cutting aspects of the DPS Agenda, particularly for personnel involved in peace operations, also by enhancing synergies with civil society, academia, and research. "consolidate the promotion of strategic communication and awareness-raising actions, strengthening Italy's participation in conferences and sectoral mechanisms (e.g. United Nations system, Red Cross, OSCE, NATO, EU, OECD, Council of Europe), in order to further support the implementation of the DPS Agenda, while at the same time ensuring the consolidation of information and training at all levels on the various cross-cutting aspects of the DPS Agenda, particularly for personnel involved in peace operations, also by enhancing synergies with civil society, academia, and research." For original text in Italian see page 18 of the Italian 2025-2029 NAP.

[56] Italy's Inter-ministerial Committee for Human Rights, *op.cit.*, 2025, p. 18

[57] Action 4.1 reads: "4.1. Promote the development—also in cooperation with CSOs, the private sector, and in particular universities—of strategic communication campaigns, including through new social media and sector-specific conferences and/or meetings, also at the local level, to disseminate the themes of the DPS Agenda, both to stakeholders and to wider audiences." For original text in Italian see page 18 of the Italian 2025-2029 NAP.

[58] Action 4.2 reads: "4.2. Strengthen education on the Women, Peace and Security agenda, including gender equality and women's human rights, also by introducing dedicated courses and training pathways within relevant undergraduate and postgraduate programs." For original text in Italian see page 18 of the Italian 2025-2029 NAP.

[59] Action 4.6 reads: "4.6. Strengthen, within the framework of training focused on the WPS Agenda, vocational training and training policies, also through the systematic inclusion of modules addressing the differential impact of armed conflicts on women and girls—also in light of the inter-university network (…)". For original text in Italian see page 18 of the Italian 2025-2029 NAP

[60] Action 4.8 reads: "4.8. Strengthen support for specific training for Italian CSOs, involving academia and other relevant stakeholders in the sector." For original text in Italian see page 19 of the Italian 2025-2029 NAP.

its scope of action to include the promotion of the right to education as a whole. That can take many forms, including the promotion of general education, literacy courses, skill building workshops and higher education preparation, and inspiration for actions can be taken from the initiative described in the following topic.

Luckily, it is in the nature of National Action Plans and in the best interest of the implementation of the Women, Peace and Security Agenda that these documents be of an evolving nature. This space for evolution is established in the current Italian NAP, which specifically states that, "in light of the commitments and projects undertaken by Italy, this Plan, while presenting a 'strategic content', constitutes a work in progress and will be subject to further possible additions over the next four years"[61]. With this opening for critical analysis of the document while it is still in force, Italy correctly leaves the door open for possible supplementations, excluding the need to wait for the next NAP negotiations for changes such as the one suggested in this paper to be implemented.

5. The *Afghan Girls Training Project*: a lesson on gender-aware reparations from Afghan women

Since the beginning of the 21st century, Afghanistan has been dealing with the ripples of the War on Terror carried out by the United States as a response to the terrorist attacks of September 11, 2001. Following the first period of Taliban rule, which spanned from 1996 to 2001, the country saw 20 years of a constitutional democracy during which the government took significant steps to protect the human rights of women and girls, with actions including the establishment of a quota for women's representation in the parliament, consistent reporting on the implementation of CEDAW from 2009 on, and the codification of gender equality in the country's 2004 constitution[62].

There are many ways to analyze the current state of affairs regarding the total restriction of the human rights of Afghan women and girls under the Taliban. However, no good understanding can come without, in the first place, contextualizing the path which both took the Taliban from power and placed them there again. Farkhondeh Akbari and Jacqui True divide this 20-year period between 2001 and 2022 in four sections: military intervention, institutionalization, peacemaking with the Taliban, and withdrawal and engagement with the Taliban[63]. According to the authors, the first phase, marked by the invasion of American military troupes after 9/11, saw the instrumentalization of the discourse around the violation of the human rights of Afghan women and girls, a plight which organizations such as Amnesty

[61] Italy's Inter-ministerial Committee for Human Rights, *op.cit.*, 2025, p. 10

[62] F. AKBARI, J. TRUE, *Women, Peace and Security in Afghanistan: How to support women and girls?*, Malala Fund, 2022, pp. 1-14.

[63] F. AKBARI, J. TRUE, *Bargaining with Patriarchy in Peacemaking: The Failure of Women, Peace and Security in Afghanistan*, in *Global Studies Quarterly*, n. 4, 2024.

International and Human Rights Watch had been denouncing for years, but only gathered attention once it coincided with American interests regarding their "national security".

The second phase, which spanned from 2004 to 2014, consisted in an institutionalized attempt at protecting women's rights through the Constitution and the political representation of women. It was during this window that the advances mentioned took place, including the creation of new national institutions for gender equality. However, the authors recognize that these institutions lacked meaningful gender and conflict sensitivities, stating that "powerful male warlords introduced their own candidates for the female reserved seats, endowing them with the resources and security support to succeed in expensive election campaigns. Such practices gave some women access to power but substantially reduced the agency of women to work on women's priorities. Paradoxically, the gender quota system increased the parliamentary representation of women, but because of corruption and rising insecurity, women were mistrusted and seen as part of the corrupt politics by ordinary Afghans"[64].

During this time, despite the unmet potential of the transformations to women's and girls' human rights under a democratic government, it can be said that meaningful improvements to women's lived experiences were made, with benefits varying from enrolment in schools to access to sexual and reproductive health. As explained in a 2022 paper supported by the Malala Fund, "a large sum of money was spent on gender related themes in the state and peacebuilding efforts. Almost every program and organization had gender equality units and projects, often to 'tick the gender box' to meet the criteria for funding, whether from international organizations funded by state donors or local organizations funded by the government"[65]. This shows that, although the situation remained, to a great extent, volatile, a gender-aware mentality was, at the very least, being fostered. It was also as a reflection of this timeframe that Afghanistan created its first NAP, which was publicized in 2015 and later renewed in 2019 for another four-year term. The country's last Progress Report dates back to 2017[66].

The third and fourth phase, respectively, consisted in the abandonment of previous commitments to women's rights and security, the granting of *de facto* political recognition to the Taliban through the beginning of the peace negotiation process and the ultimate disastrous withdrawal of the American troops from the Afghan territory, which caused the collapse of the country's security forces and ultimately ensued the return of the Taliban to power in August 2021.

This was a direct consequence of the Doha Agreement, which was negotiated between the United States government and the extremist group between 2018 and 2020 without the participation of a single woman.

64 F. AKBARI, J. TRUE, *Bargaining with…*, *op.cit.*, n. 4, 2024, p. 7
65 F. AKBARI, J. TRUE, *Women, Peace and...*, *op.cit.*, p. 4.
66 Afghanistan's Ministry of Foreign Affairs, Directorate General of Human Rights and Women's International Affairs, *2017 Status Report on Afghanistan's National Action Plan on UNSCR 1325 (Women, Peace and Security)*, 2017.

Afghan women were vocal in their dissent, loudly stating their concerns and incredulity regarding the group's supposedly moderate stances on women's rights. They called the international community's attention to the Taliban's well-documented history of gender discriminatory views and policies, but the covenant went through, nonetheless. Since then, women and girls have been stripped of many of their fundamental rights, including their right to education, as they were banned from attending secondary school and university. Recently, a new "Vice and Virtue" law approved by the current Afghan government goes as far as banning women's voices in public, effectively erasing them from public life[67]. In fact, the list of enactments by the Taliban restricting the human rights of women and girls is so predictably long and harsh that women's rights advocates are rightfully fighting for the recognition of the crime of gender apartheid, of which Afghan women and girls are victims[68].

In light of this situation, and in the interest of fostering and protecting women and girls' right to education, the Monash Global Peace and Security Centre (GPS) of Monash University in Australia, in cooperation with the Asylum Seeker Refugee Centre, created the *Afghan Girls Training Project*, a month-long intensive online education program for young women living in Afghanistan under Taliban rule designed to help them enhance their research and writing skills. As explained by the University's description of the initiative, it "underscores the critical role of education in empowering Afghan women to rebuild their lives and advocate for their rights"[69].

This good practice is led by Parisa Sekandari, a Monash GPS Fellow who is herself an Afghan refugee who fled her country after the return of the Taliban to power. Through her first-hand experience, she highlights how important her own educational background was for her empowerment and how it equipped her with the abilities needed to effectively advocate for herself and for others. The project, which started in July 2024, consisted of training offered by Ms. Sekandari and other members of the Monash GPS "with an approach that prioritizes the psychological safety of students through intentional community building and reflective practice"[70].

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[67] D. PENN, *Afghanistan: Taliban rule has erased women from public life, sparked mental health crisis*, in UN News, August 13, 2024.

[68] For more information on gender apartheid in Afghanistan, see: R. S. ALWIS, *Holding the Taliban Accountable for Gender Persecution: The Search for New Accountability Paradigms under International Human Rights Law, International Criminal Law and Women, Peace and Security*, in *German Law Journal*, n. 25, 2024, pp. 2889-334; K. BENNOUNE, *The International Obligation to Counter Gender Apartheid in Afghanistan*, in *Columbia Human Rights Law Review*, n. 54.1, 2022, pp. 1-88; UNITED NATIONS HUMAN RIGHTS COUNCIL, *The Phenomenon of an Institutionalized system of discrimination, segregation, disrespect for human dignity and exclusion of women and girls: report of the Special Rapporteur on the situation of human rights in Afghanistan*, United Nations, 2024.

[69] See *Current Projects* for more information on the Monash Global Peace and Security Centre.

[70] See *Harnessing hope through education: Monash GPS's Parisa Sekandari leads educational initiatives for young Afghan women and girls*.

As reported by Ms. Sekandari, the program had over 100 participants between the ages of 18 and 30, most of which were undergraduates from multiple cities of Afghanistan who were affected by the Taliban's restrictive policies. Afghan women interested in the initiative could enroll via e-mail at no cost. There were 5 sessions of one hour each guided by academics and experts on the basic principles of research and writing. Feedback from students revealed that the skills learned through the program gave them a shared sense of hope[71].

The development of this activity is directly related to the interests of WPS and, if included in the Italian implementation of the Agenda through analogous initiatives, could have concrete benefits to women and girls living under or after armed conflicts. Firstly, it would carry a certain level of innovation, given the aforementioned fact that Italy's NAPs still adopt a limiting scope of action with the focus of educational efforts restricted to issues related to the UNSC Resolutions that compose the Agenda. The promotion of an activity of this kind would effectively broaden the reach of the Italian engagement, providing women and girls with a meaningful and valuable tool for self-advocacy, independence, and capacity building, and fostering their participation in public life as well as the protection of their human rights.

Secondly, activities such as the *Afghan Girls Training Program* are easily reproducible over time through many different viewpoints. The fact that the course is virtual and short-termed makes both its organization and its participation flexible, accessible, and considerably easier. In addition to that, the Progress Reports of the implementation of the Italian NAPs show that the country has had a solid network of universities working on activities related to the WPS Agenda at least since 2017[72]. Any of the institutions involved, including the Sapienza Università di Roma, could take the lead in promoting courses such as the one mentioned above.

Moreover, the choices of subject matter for the courses are endless and can be adapted to the particularities of each context in which they are set to be reproduced, individualizing specific needs of women and girls with the help of grassroots groups and activists with first-hand knowledge of the situation in an interdisciplinary and multi-levelled approach. It is also relevant to mention that many Afghan professors and academics are exiled around the world, and that their collaboration with Italian institutions can make the activities even more valuable. Programs following this system are already in place for students in areas of conflict such as Ukraine[73].

Finally, the impact of programs such as the *Afghan Girls Training Project* can be measured through the active enrolment and participation of students, who can receive a certificate of participation upon

[71] Information obtained through direct correspondence between the author and Ms. Sekandari.
[72] Italy's Inter-ministerial Committee for Human Rights, *First Progress Report of Italy On the Third National Action Plan On Women, Peace and Security, 2016 – 2019, UN Security Council Resolution 1325(2000)*, 2018.
[73] F. AKBARI, J. TRUE, *Women, Peace and...*, *op.cit.*, p. 11.

conclusion of the course, and through the establishment of a network of alumni[74], which can become a tool for activism in itself. In addition to that, the short-term programs can also partner with NGOs and other institutions in order to provide students with a direct outlet for their newly acquired skills, giving them opportunities to gain practical experience in the workforce and strive towards their financial independence.

6. Closing remarks

In light of the notable evolution of reparations from a normative and concrete standpoint, it is adamant to highlight current limitations regarding gender and the poor addressing of women and girls' specific redress needs in conflict and post-conflict scenarios. The systemic inadequacy of international mechanisms in upholding gender-sensitive measures of remedy, among which is the jurisprudence of the International Criminal Court, unveils the urgent need for a more refined take on the gender-specific circumstances and needs of victims of gross violations of international human rights law and serious violations of international humanitarian law.

The arguments for a gender-aware approach to reparations are in favor of the adoption of a perspective which puts women and girls victims in the center of the entire process, both as participants and as decision-makers with agency to guide their own futures. This is at the core of the UNSC Women, Peace and Security Agenda, which fosters a women-centered take on all phases of conflicts.

As shown, Italy's implementation of the WPS Agenda is substantive, but has room for expansion, given that its current approach to education under its current NAP remains overly narrow, largely confined to awareness-raising on WPS-related topics. The broader scope of action suggested here is already standard in the practice of other countries and can directly and meaningfully benefit women and girls in conflict and post-conflict settings. It also emphasizes the importance of schooling as a human right to be protected and as a reparation measure which leads to the strengthening of other methods of redress.

The Afghan Girls Training Project offers a concrete and replicable model for such an approach. It demonstrates that reparations need not be limited to financial compensation or symbolic gestures. They can, and should, include empowering interventions that equip women and girls to rebuild their lives. A compelling model of gender-sensitive reparation which embodies the spirit of transformative justice is a rather promising prospect for the future, and, as demonstrated, Italy has the infrastructure, credibility, and international standing to lead it.

[74] This initiative is already in effect for the annual advanced training course on Women, Peace and Security offered by the Sapienza University, for example.

Gender-Sensitive Reparation through Art: Hammering Suffering at *Fragmentos* *

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Abstract [En]: This article examines the concept of reparation within transitional justice through a gender-sensitive lens, with a particular focus on the role of art as a form of symbolic reparation for women who have survived armed conflict. It traces the evolution of reparative paradigms—from predominantly legalistic and corrective frameworks to broader, transformative approaches—and identifies key shortcomings in prevailing practices. In particular, the article argues that conventional approaches often fail to capture the complexity of women's experiences of victimization and neglect their agency as active participants in reshaping their lives and contributing to the post-conflict reconstruction. Within this framework, artistic expression is explored as a critical site for processing and reinterpreting conflict-related experiences, with the potential to generate inclusive and transformative forms of reparation grounded in women's lived realities. The analysis centers on *Fragmentos, Espacio de Arte y Memoria*, a counter-monument in Bogotá co-created by women survivors of sexual violence during the Colombian conflict.

Abstract [It]: Il contributo approfondisce il tema della riparazione nei contesti di giustizia di transizione in prospettiva di genere, con particolare attenzione al potenziale dell'arte come forma di riparazione simbolica per le donne sopravvissute ai conflitti armati. A partire da un'analisi dell'evoluzione dei paradigmi riparativi—da modelli correttivi, di matrice giuridica, a concezioni più ampie, orientate alla trasformazione strutturale—l'articolo ne evidenzia i limiti applicativi, mostrando come tali approcci non riescano a riconoscere la complessità della vittimizzazione femminile, né il ruolo delle donne come soggetti capaci di incidere attivamente sulla propria esistenza e sul processo di ricostruzione post-conflittuale. In questa prospettiva, l'arte si configura come un possibile spazio di elaborazione e risignificazione dell'esperienza del conflitto, in grado di generare risposte riparative inclusive, trasformative e radicate nei vissuti delle donne. L'analisi si concentra sul caso di *Fragmentos, Espacio de Arte y Memoria*, contro-monumento realizzato a Bogotá da donne sopravvissute a violenza sessuale durante il conflitto colombiano.

Keywords: transitional justice, reparation, women, art, *Fragmentos*
Parole chiave: giustizia di transizione, riparazione, donne, arte, *Fragmentos*

Table of contents: **1.** Introduction. **2.** Evolving trajectories of reparation: from international law to transitional justice. **3.** Gender-sensitive reparation: recognition, transformation and participation. **4.** Between promise and practice. **5.** Women shaping their own reparation through artistic practice. **5.1.** The role of art in engendering reparation. **5.2.** From weapons to resistance: the case of *Fragmentos, Espacio de Arte y Memoria*. **6.** Conclusion.

1. Introduction.

In recent decades, the international community has increasingly recognized the distinct ways in which women are affected by armed conflicts, as well as the pervasive and systematic nature of gender-based violence in such settings. Landmark rulings by the International Criminal Tribunals for the former

* Peer reviewed.

Yugoslavia and Rwanda marked a turning point in this regard, by classifying various forms of violence against women as international crimes and paving the way for their explicit inclusion in the Rome Statute[1]. At the same time, perspectives on women in conflict have evolved beyond the narrow view of passive victimhood. While gender-based violence—such as sexual violence, sexual slavery, and other forms of coercion—remains one of the most destructive and widespread forms of harm during war, women also frequently occupy active and multifaceted roles, including those of caregivers, mediators, and participants in resistance movements. In some contexts, they may also engage directly in violence, whether as combatants or as agents of political transformation[2].

This growing attention to the diversity of women's experiences in conflict has been accompanied by a broader recognition of the need to make peacebuilding efforts genuinely gender-inclusive. This means not only designing interventions that address women's specific realities but also ensuring their meaningful participation in shaping transitional justice processes, as their perspectives can significantly influence both the aims and the outcomes of post-conflict reconstruction[3]. Within this broader context, reparations for women have emerged as a key concern. Reparations—understood not merely as financial compensation, but as symbolic, collective, and transformative measures—are essential tools for acknowledging harm and fostering healing and reconciliation. Crucially, they function as a bridge between past abuses and future social rebuilding, signaling a state's commitment to confronting wrongdoing and preventing its recurrence. Yet too often, these measures are conceived in gender-neutral terms, and women are frequently excluded from the design and implementation of reparation programs. As a result, gender-based violence is minimized, and the effectiveness and legitimacy of initiatives aimed at addressing it are significantly undermined[4].

This study is grounded in this perspective. It adopts a gender-sensitive approach focused on women and examines how reparation measures respond to the specific harms they endure in conflict, while also

[1] In particular, see International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Jean-Paul Akayesu*, Judgment of September 2, 1998, Case No. ICTR-96-4-T; International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Anto Furundžija*, Judgment of December 10, 1998, Case No. IT-95-17/1-PT; International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Judgment of February 22, 2001, Case Nos. IT-96-23-T and IT-96-23/1-T.

[2] B. HAMBER, I. PALMARY, *Gender, Memorialization, and Symbolic Reparations*, in R. RUBIO-MARÍN (Ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, Cambridge, 2009, pp. 332-337.

[3] For an extensive discussion on efforts to make post-conflict interventions gender-inclusive, see M. D'AMICO, T. GROPPI, C. NARDOCCI (Eds.), *Women and Peace*, Franco Angeli, Milan, 2024.

[4] R. MANJOO, *Introduction: reflections on the concept and implementation of transformative reparations*, in *The International Journal of Human Rights*, 21, 9, 2017, p. 1195; R. RUBIO-MARÍN, *Introduction: A Gender and Reparations Taxonomy*, in R. RUBIO-MARÍN (Ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, Cambridge, 2009, pp. 2-3; A. SARIS, K. LOFTS, *Reparation Programmes: A Gendered Perspective*, in C. FERSTMAN, M. GOETZ, A. STEPHENS (Eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in place and systems in the making*, Nijhoff, Leiden, Boston, 2009, p. 81.

supporting the forms of agency they exercise in its aftermath. Within this framework, particular attention is given to the role of art as a vehicle for advancing gender-sensitive reparation through bottom-up, participatory practices, showing how creative processes can open spaces for women's voices and collective engagement in post-conflict settings. In doing so, the study brings together conceptual analysis and attention to concrete experiences to reflect on how reparations can better address the lived realities of women in post-conflict societies.

Following this introduction, the article is structured into four main sections. Section 2 traces the evolution of reparation paradigms from international law to transitional justice, highlighting the shift from corrective models to more victim-centered and transformative understandings. Section 3 examines the gendered nature of harm in conflict and sets out a three-dimensional framework for gender-sensitive reparation, structured around recognition, transformation, and participation. Section 4 uses this framework to critically assess existing post-conflict reparation schemes and their capacity to advance these three dimensions in practice. Section 5 explores the potential of art-based symbolic reparation along the same axes, first at a theoretical level and then through an analysis of *Fragmentos, Espacio de Arte y Memoria*, a counter-monument forged from melted weapons by women survivors of sexual violence during the Colombian armed conflict.

2. Evolving trajectories of reparation: from international law to transitional justice.

The principle that states have an obligation to provide reparation for internationally wrongful acts is firmly rooted in international law and has long been recognized as a foundational norm. A seminal articulation of this duty can be found in the 1928 jurisprudence of the Permanent Court of International Justice (PCIJ), the forerunner of today's International Court of Justice, which famously held that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed"[5]. This core understanding has been codified and further developed in the *Articles on Responsibility of States for Internationally Wrongful Acts* (the ILC Articles), which constitute the primary reference framework in this matter. According to Article 31 of the ILC Articles, a state responsible for an internationally wrongful act is under an obligation to make "full reparation" for the injury caused, whether material or moral. From the perspective of public international law, then, states must restore the *status quo ante*—the situation that existed before the breach occurred. This is to be achieved, where possible, through *restitutio in*

[5] Permanent Court of International Justice (PCIJ), *Chorzów Factory (Germany v. Poland)*, Judgment (Merits), 13 September 1928, Series A, No. 17, p. 47.

integrum, that is, by restoring the injured party to the position they would have been in if the wrongful act had not occurred[6].

One important point to clarify when considering the concept of reparation under public international law is that it traditionally operates as a matter of inter-state responsibility: international legal obligations are understood to exist between states, not between states and individuals. However, this changes within the framework of international human rights law, where relations between individuals and states come into play. In this context, principles of reparation have developed primarily through the jurisprudence of regional human rights courts, most notably the Inter-American Court of Human Rights[7].

A landmark case in this evolution is *Velásquez Rodríguez v. Honduras* (1988), in which the Court held that a violation of an international obligation that causes harm entails a duty to provide adequate reparation to the victims[8]. In the same judgment, the Court also demonstrated a clear awareness of the depth of suffering experienced by victims of serious human rights violations, as well as the significant potential of reparation itself. On the one hand, the judges broadened the traditional notion of *restitutio in integrum* to include not only "the restoration of the prior situation" but also "the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm"[9]. On the other hand, the Court recognized that reparation is not solely about redressing past harm but also serves a preventive function, thus contributing to a broader process of coming to terms with the past[10]. Consistent with this expanded and forward-looking understanding, the Court has further emphasized the temporal dimension of reparation, affirming that the obligation to provide redress for gross human rights violations is not limited by time or political change: it remains in force until fully satisfied and, in doing so, connects different historical periods and regimes[11].

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[6] On the topic, D. SHELTON, *Righting Wrongs: Reparations in the Articles on State Responsibility*, in *The American Journal of International Law*, 96, 4, 2002.

[7] A. J. CARRILLO, *Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, in P. DE GREIFF (ed.), *The Handbook of Reparations*, Oxford University Press, Oxford, 2006, eBook, pp. 506 ff.; D. CASSEL, *The Expanding Scope and Impact of Reparations Awarded by the Inter-American Court of Human Rights*, in *Revista do Instituto Brasileiro de Direitos Humanos*, 7, 2006, pp. 92 ff.

[8] Inter-American Court of Human Rights (IACtHR), *Velásquez Rodríguez v. Honduras,* Reparations and Costs, Judgment of July 29, 1988, Series C No. 4, para. 25.

[9] Inter-American Court of Human Rights (IACtHR), *Velásquez Rodríguez v. Honduras*, *cit.*, para. 26.

[10] L. J. LAPLANTE, *Bringing Effective Remedies Home: The Inter-American Human Rights System, Reparations, and the Duty of Prevention*, in *Netherlands Quarterly of Human Rights*, 22, 3, 2004, pp. 357-361.

[11] In this sense, the duty to provide reparation can be understood as "manifestly transitional". See R. G. TEITEL, *Transitional Justice*, Oxford University Press, Oxford, 2000, p. 125. The understanding of reparation developed in the *Velásquez Rodríguez* case has had a tangible impact on the design of transitional justice processes in Latin America. By affirming the enduring nature of reparation, the Inter-American Court not only reinforced the legal obligation to provide redress but also helped shape the normative foundations of reparation programs in countries such as Argentina and Chile, thus offering guidance to states seeking to address the lasting consequences of past repression. In this regard, see A. J. CARRILLO, *Justice in Context*, *cit.*, p. 506.

The increasing focus on reparation for victims of gross human rights violations at the regional level has led to broader recognition of its significance. Notably, the possibility of awarding reparations has been incorporated into the framework of the Rome Statute, which entered into force in 2002. Under this framework, individuals found responsible for international crimes may be required to provide reparations, a process further supported by the Trust Fund for Victims[12]. Additionally, reparation has been acknowledged in key international soft-law instruments. Among the most comprehensive are the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, adopted in 2006[13].

Rooted in the recognition of victims' right to a remedy under international law[14], the Principles do not introduce new legal obligations but rather identify innovative mechanisms and procedures for implementation. In this spirit, they advocate for a broad approach to reparation—one that centers the needs and perspectives of victims and moves beyond a narrow understanding of reparation as merely restoring the *status quo ante*. They thus set out a multidimensional strategy encompassing five key forms: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. In brief, each of these types of reparation serves a distinct purpose. Restitution seeks to restore victims to their pre-violation state, through measures such as the restoration of liberty or the return to one's place of residence; compensation offers material redress proportionate to the harm suffered; rehabilitation aims at physical and psychological recovery; satisfaction encompasses interventions such as truth-telling, memorialization, and public apologies; guarantee of non-repetition involves structural and institutional reforms to prevent future violations[15].

On these grounds, the concept of reparation takes shape within the broader framework of transitional justice strategies. Among all the measures that make up the transitional justice toolkit[16], reparation holds

[12] For further discussion, G. BITTI, G. GONZÁLEZ RIVAS, *The reparations provisions for victims under the Rome Statute of the International Criminal Court*, in THE INTERNATIONAL BUREAU OF THE PERMANENT COURT OF ARBITRATION (Ed.), *Redressing injustices through mass claims processes: Innovative responses to unique challenges*, Oxford University Press, Oxford, 2006, pp. 45-65.

[13] UNITED NATIONS GENERAL ASSEMBLY, *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, UN Doc. A/RES/60/147, 21 March 2006.

[14] Although the Principles explicitly reference an individual right to reparation, the contours of this right under international law remain unclear. On the topic, F. HALDEMANN, *Principle 31. Rights and Duties Arising Out of the Obligation to Make Reparation*, in F. HALDEMANN, T. UNGER (Eds.), *The United Nations Principles to Combat Impunity. A Commentary*, Oxford University Press, Oxford, 2018, pp. 338 and 346.

[15] For further discussion, M. C. BASSIOUNI, *International recognition of victims' rights*, in *Human Rights Law Review*, 6, 2, 2006, pp. 247-276; D. SHELTON, *The United Nations Principles and Guidelines on Reparations: Context and Contents*, in K. DE FEYTER, S. PARMENTIER, M. BOSSUYT, P. LEMMENS (Eds.), *Out of the Ashes. Reparations for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Antwerpen, Oxford, 2005, pp. 11-33.

[16] Transitional justice is typically structured around four main pillars: truth, justice, reparation, and guarantees of non-recurrence. More recently, a fifth pillar has been recognized—that of memory. See UNITED NATIONS GENERAL ASSEMBLY, *Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice*, UN Doc. A/HRC/45/45, 9 July 2020; UNITED NATIONS SECURITY COUNCIL, *The rule*

a particularly central place. It is, in fact, the only measure designed explicitly and exclusively for the benefit of victims, aiming to provide a meaningful response to the harm they endured and thus supporting them in rebuilding their lives[17].

In this context, rather than differentiating among the five categories of reparation identified by the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, practitioners and scholars often draw a key conceptual distinction between "material" and "symbolic" forms of reparation. Material reparations typically involve tangible benefits to victims—such as financial compensation, healthcare, education, property restitution, or rehabilitation—reflecting a blend of compensation, restitution, and rehabilitation measures. Symbolic reparations, by contrast, seek to acknowledge suffering and reaffirm dignity through non-material means, such as official apologies, truth-telling initiatives, or the renaming of public spaces. Importantly, this distinction serves a heuristic purpose rather than reflecting a rigid divide in reality; in fact, material and symbolic measures often intersect and reinforce one another[18].

Reparations may vary not only in form but also in scope. They can be designed to address harm at different levels: on the one hand, "individual" reparations are directed at specific victims based on the particular violations they suffered; on the other, "collective" reparations respond to harm experienced by groups and aim to repair the social fabric and affirm their identity and rights. An effective reparation strategy must therefore adopt a holistic and context-sensitive approach, combining different interventions to respond meaningfully to the diverse realities and needs of victims[19].

Regardless of the specific measures adopted, a clear understanding of the purpose and nature of reparation within transitional justice frameworks is essential. In contexts marked by mass violence, the harm suffered is so extensive and multidimensional that a fully corrective model—akin to that applied in judicial proceedings—is neither conceptually adequate nor practically feasible. Instead, reparation in transitional settings serves broader functions: it becomes a "medium for the contentious yet hopeful negotiation in the present of proper recognition of the past and proper terms of relation for the future"[20].

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of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General, UN Doc. S/2004/616, 23 August 2004.

[17] P. DE GREIFF, *Introduction. Repairing the Past: Compensation for Victims of Human Rights Violations*, in P. DE GREIFF (Ed.), *The Handbook of Reparations*, Oxford University Press, Oxford, eBook, 2006, p. 2.

[18] For instance, compensation becomes more meaningful when embedded within a broader narrative of acknowledgment and accountability, whereas symbolic gestures may be perceived as hollow if not accompanied by tangible forms of support. See OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Rule-of-law tools for post-conflict states: Reparations programmes*, UN Doc. HR/PUB/08/1, 2008, pp. 22-26.

[19] MOFFETT, *Transitional justice and reparations: Remedying the past?*, in C. LAWTHER, L. MOFFETT, D. JACOBS (Eds.), *Research handbook on transitional justice*, Edward Elgar Publishing, Cheltenham, 2017, pp. 386-388; OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Rule-of-law tools for post-conflict states*, *op. cit.*, p. 22.

[20] M. U. WALKER, *Making Reparations Possible: Theorizing Reparative Justice*, in C. CORRADETTI, N. EISIKOVITS, J. V. ROTONDI, *Theorizing Transitional Justice*, Routledge, London, 2015, p. 217.

In other words, reparation should be understood as a set of measures grounded in past harm but oriented toward restoring dignity and improving victims' future prospects[21].

In this light, reparation is more than a mere technical obligation. According to some scholars, it constitutes a *political process* aimed at recognizing victims as individuals and citizens, restoring their dignity, and rebuilding trust in state institutions[22]. Others go further, framing reparation as a *transformative process*—one with the potential to confront the structural inequalities that enabled violence and exclusion in the first place, while fostering the conditions for a more inclusive and democratic society. From this angle, the idea of returning victims to their pre-conflict status is not only unachievable but also undesirable, as it risks re-establishing the very conditions of injustice and inequality that contributed to violence in the first place. Transitional justice should therefore embrace a reparative paradigm that actively seeks to transform social order, so that past abuses are not only acknowledged but rendered truly unrepeatable[23].

Crucially, this shift away from a case-by-case approach does not imply neglecting the needs of victims. In practical terms, reparation in transitional justice contexts is often implemented through collective, administrative (out-of-court) programs, which should be shaped around victims' concrete experiences, expectations, and social realities. In other words, victims' voices should guide reparation programs to ensure they are both symbolically meaningful and practically effective in addressing the harm they have suffered.

3. Gender-sensitive reparation: recognition, transformation and participation.

As previously mentioned, reparation is the only mechanism within transitional justice that is specifically designed for the benefit of victims. This means that reparative programs must be built around the experiences of victims and, where those victims are women, must take into account women's specific experiences of victimization and the unique ways in which conflicts impact their lives.

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[21] This conception of reparation aligns closely with the broader aims of transitional justice, which operates as both a backward-looking and forward-looking process designed to promote peaceful coexistence through social transformation. On the topic, F. HALDEMANN, *Transitional justice for foxes: conflict, pluralism and the politics of compromise*, Cambridge University Press, Cambridge, New York, 2023, pp. 18-19; C. SANDOVAL, *Transitional Justice and Social Change*, in *International Journal on Human Rights*, 20, 2014.

[22] P. DE GREIFF, *Justice and reparation*, in P. DE GREIFF (Ed.), *The handbook of reparations*, Oxford University Press, Oxford, eBook, 2006, p. 454. See also L. MOFFETT, *Transitional justice and reparations*, *cit.*, pp. 381-382; M. U. WALKER, *Making Reparations Possible*, *cit.*, pp. 217-218.

[23] R. MANJOO, *Introduction*, *cit.*, p. 1196-1200; L. MOFFETT, *Transitional justice and reparations*, *op. cit.*, p. 382-383; R. RUBIO-MARÍN, *Introduction: A Gender and Reparations Taxonomy*, *cit.*, p. 17; R. UPRIMNY YEPES, *Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice*, in *Netherlands Quarterly of Human Rights*, 27, 4, 2009, pp. 637-645. For a critical discussion of the concept of transformative reparations, see M. U. WALKER, *Transformative reparations? A critical look at a current trend in thinking about gender-just reparations*, in *International Journal of Transitional Justice*, 10, 1, 2016.

Although theoretically intuitive, this principle has proven difficult to implement. Until recently, women have been largely neglected in transitional justice efforts, both in academic and policy discourse. Little attention has been paid to the forms of victimization that affect them, their post-conflict needs, and their inclusion in peacebuilding strategies[24]. A clear example of this can be found in the way sexual violence has historically been treated—either ignored altogether or dismissed as a secondary side effect of armed conflict. Thanks to the advocacy of transnational feminist networks, the Rome Statute today recognizes various forms of violence against women as war crimes, crimes against humanity, and, in certain cases, acts of genocide. However, during the negotiations leading up to its adoption, many delegations opposed the inclusion of sexual offenses, arguing that such crimes were either marginal compared to other atrocities or too difficult to prosecute[25].

The work of feminist networks has also been crucial in the gradual efforts to engender reparations—primarily by focusing on the forms of violence suffered by women in contexts of conflict and political repression, along with their long-term consequences. As the literature on the subject has now clearly established, women in such situations experience not only sexual offences, but also a range of intersecting, cumulative violations, including forced displacement, loss of family members, and destruction of livelihoods[26]. These dynamics have been evident across different conflicts. In Bosnia, for example, while sexual violence was systematically used as a weapon of war, many women also lost husbands, brothers, and sons, and to this day have received no information about the fate of their loved ones[27]. In the Syrian conflict, millions of women were displaced, often finding themselves alone and solely responsible for heavy caregiving burdens, without access to support or resources[28]. Thus, beyond the serious physical and psychological consequences—ranging from trauma to reproductive health risks—gender-based violence frequently results in long-term poverty and social isolation. During the Rwandan genocide, thousands of women were raped, many of whom contracted HIV or were later marginalized by their

[24] C. O'ROURKE, *Transitional justice and gender*, in C. LAWTHER, L. MOFFETT, D. JACOBS (Eds.), *Research Handbook on Transitional Justice*, Edward Elgar Publishing, Cheltenham, 2017, pp. 118 ff.; R. RUBIO-MARÍN, *The gender of reparations: Setting the agenda*, in R. RUBIO-MARÍN (Ed.), *What happened to the women? Gender and reparations for human rights violations*, Social Science Research Council, New York, 2006, pp. 22-23.

[25] R. COPELON, *Gender crimes as war crimes: integrating crimes against women into international criminal law*, in *McGill Law Journal*, 46, 1, 2000, p. 233.

[26] L. JOLOF, P. ROCCA, M. MAZAHERI, L. OKENWA EMEGWA, T. CARLSSON, *Experiences of armed conflicts and forced migration among women from countries in the Middle East, Balkans, and Africa: A systematic review of qualitative studies*, in *Conflict and Health*, 16, 1, 2022, pp. 5 ff.; R. RUBIO-MARÍN, *What happened to the women? Gender and reparations for human rights violations*, Social Science Research Council, New York, 2006; R. RUBIO-MARÍN, *The gender of Reparations in Transitional Societies*, in R. RUBIO-MARÍN (Ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, Cambridge, 2009, pp. 97-101.

[27] AMNESTY INTERNATIONAL, *Casualties of War: Women's Bodies, Women's Lives – Stop Crimes against Women in Armed Conflict*, Amnesty International Publications, 2004, pp. 8-9.

[28] UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *Inter-agency assessment: Gender-based violence and child protection among Syrian refugees in Jordan, with a focus on early marriage*, 2013 (retrieved from UN Women website).

communities. The stigma also affected their daughters, who were often associated with the violence their mothers endured and therefore excluded from society[29].

Within this framework, it is worth noting that violence against women in conflict settings is not simply a byproduct of war, nor is it solely driven by military objectives. Rather, the victimization of women must be understood within a broader context shaped by the power dynamics that structure the societies in which they live. Central to this is the often patriarchal nature of the social and institutional arrangements governing women's lives, in which women become targets of violence precisely because they are women: they are viewed as subordinate to men, as objects of sexual gratification, or as vessels of social, cultural, and biological reproduction[30]. In this sense, gender-based violence perpetrated during conflict serves to reinforce power hierarchies that are already present in peacetime, intensify during conflict, and persist in post-conflict settings. In other words, gender-based violence must be understood as existing along a *continuum*[31]: conflicts do not generate entirely new forms of violence but rather exacerbate and expose those that already exist—such as domestic abuse, economic inequality, and control over women's bodies[32].

When seen in this light, violence against women poses a serious challenge for transitional justice, particularly in relation to reparations. As previously noted, women often suffer severe physical, psychological, and social harm in the aftermath of conflict, typically within environments where war has intensified pre-existing gender inequalities and power imbalances. Moreover, even when the violence is

[29] M. DENOV, D. SAAD, *Umwana w'umugore: The gendered realities of girls born of conflict-related sexual violence and their mothers in post-genocide Rwanda*, in *Journal of Health Psychology*, 29, 13, 2024, pp. 1506-1512.

[30] R. RUBIO-MARÍN, *Gender and Collective Reparations in the Aftermath of Conflict and Political Repression*, in R. RUBIO-MARÍN (Ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, Cambridge, 2009, p. 389; M. U. WALKER, *Gender and Violence in Focus: A Background for Gender Justice in Reparations*, in R. RUBIO-MARÍN (Ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, Cambridge University Press, Cambridge, 2009, pp. 24-28.

[31] The concept of the *continuum of violence* has become a key analytical tool in feminist studies on gender-based violence in peacetime contexts, where it serves to challenge fragmented and hierarchical approaches to understanding violence against women. Originally developed by Liz Kelly, the concept asserts that male violence should be seen as existing along a *continuum*—from highly visible and extreme forms such as rape and femicide to everyday acts that are often normalized or socially tolerated, including harassment, threats, economic control, and emotional abuse (L. KELLY, *Surviving Sexual Violence*, Polity Press, Cambridge, 1988). This interpretative framework has also been taken up in the field of peace and conflict studies, where it is linked to broader theories of structural, cultural, and direct violence. In this context, large-scale physical violence is understood not as an isolated eruption, but as embedded in a broader environment shaped by systemic inequalities and cultural narratives that legitimize or obscure harm. These conditions create fertile ground for physical violence to occur, persist, and remain underreported. On the topic, see N. SCHEPER-HUGHES, P. BOURGOIS, *Introduction: Making sense of violence*, in N. SCHEPER-HUGHES, P. BOURGOIS (Eds.), *Violence in war and peace: An anthology*, Blackwell, Oxford, 2004. See also J. GALTUNG, *Violence, Peace, and Peace Research*, in *Journal of Peace Research*, 6, 3, 1969; J. GALTUNG, *Cultural Violence*, in *Journal of Peace Research*, 27, 3, 1990; N. SCHEPER-HUGHES, *Small wars and invisible genocides*, in *Social Science & Medicine*, 43, 5, 1996.

[32] C. COCKBURN, *The continuum of violence: A gender perspective on war and peace*, in W. GILES (Ed.), *Sites of violence: Gender and conflict zones*, University of California Press, Berkeley, 2004, pp. 43-44; M. U. WALKER, *Gender and Violence in Focus*, *cit.*, pp. 28-31.

not overtly gendered, its impact on women is shaped by their social status, which generally places them in conditions of heightened economic and social vulnerability compared to men[33]. This underscores the importance of designing reparation programs that reflect the complexity of women's victimization and promote comprehensive, context-sensitive, and holistic responses. Such programs should not only support survivors in coping with the psychological and material consequences of violence but also aim to challenge and transform the structural inequalities that enabled such violations and continue to threaten women's security and equality in post-conflict settings.

To this end, insights from feminist literature and gender-sensitive post-conflict reparation scholarship suggest that reparation programs for women should be articulated along three interrelated dimensions: recognition, transformation, and participation.

Promoting reparative measures that foster *recognition* entails, first and foremost, acknowledging the harm and suffering endured by women. From this perspective, the goal is to help survivors reach "a psychological state in which they feel that adequate amends have been made for a wrong committed", thereby restoring their sense of dignity and humanity[34]. However, recognition must extend beyond the acknowledgment of harm: women should be recognized not only as victims, but as individuals capable of consenting, resisting, negotiating, and reshaping both their lives and the environments in which they live—as agents in their own right. This requires the promotion of empowerment initiatives—such as access to education, vocational training, and awareness-raising programs—that support women in claiming their place as equal rights holders within the emerging social order[35].

From this standpoint, reparation is not merely a means to ensure a dignified life: it represents an emancipatory process, one that enables both personal and systemic *transformation*. By reclaiming control over their lives and asserting their roles as citizens, women rebuild a sense of agency, restore their self-worth, and redefine their identities in ways that resist the stigma and silence often associated with gender-based violence. Yet, these acts also carry systemic implications, as they are inherently political: they directly confront and destabilize the gendered structures of domination that seek to marginalize women, thus advancing social change[36].

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[33] INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, *Gender and transitional justice: A training module series – Module 3: Reparative*, 2018, (retrieved from the International Center for Transitional Justice website).

[34] B. HAMBER, *Narrowing the micro and the macro: A psychological perspective on reparations in societies in transition*, in P. DE GREIFF (Ed.), *The handbook of reparations*, Oxford University Press, Oxford, 2006, eBook, p. 564. See also R. RUBIO-MARÍN, *The gender of Reparations in Transitional Societies*, *cit.*, pp. 72 ff.

[35] R. MANJOO, *Introduction*, *op. cit.*, pp. 1197-1198; R. RUBIO-MARÍN, *The gender of Reparations in Transitional Societies*, *cit.*, pp. 66 ff.; A. SARIS, K. LOFTS, *Reparation Programmes*, *cit.*, p. 97.

[36] R. MANJOO, *Introduction*, *op. cit.*, pp. 1198-1199; F. NÍ AOLÁIN, C. O'ROURKE, A. SWAINE, *Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice*, in *Harvard Human Rights Journal*, 28, 2015, pp. 141-142; R. RUBIO-MARÍN, *Introduction: A Gender and Reparations Taxonomy*, *cit.*, pp. 16-17; A. SARIS, K. LOFTS, *Reparation Programmes*, *op. cit.*, pp. 91-96. To be effective, such change must be supported through interventions at the systemic,

Within this process, ensuring the active *participation* of women who have directly experienced violence plays a crucial role in shaping and implementing reparation programs[37]. Their involvement responds to a range of epistemological, political, and symbolic imperatives, all closely tied to the goals of recognition and transformation.

First, only women themselves can authentically and consciously articulate and narrate the forms and implications of their victimization. This is essential not just for understanding the full extent of the harm they have endured, but also contributes to the production of a situated, non-stereotypical perspective on gender-based violence and the power relations that sustain it. Indeed, like all oppressed subjectivities, women occupy a privileged position from which to analyze the dynamics of oppression, precisely because of their lived experience[38]. Thus, women's narratives emerge as powerful tools for challenging dominant representations of such violence and for informing reparation strategies that are both transformative and genuinely responsive to survivors' needs.

Second, enabling women to actively participate in the development and implementation of institutional responses to violence represents a form of reparative recognition. Promoting participation not only acknowledges and validates the pain and suffering experienced by women but also dismantles the logic of passive victimhood. It allows women to assert themselves as legitimate voices in the public sphere, thereby reaffirming their political agency and their role in shaping their future[39].

Finally, the active presence of women in peacebuilding processes directly challenges entrenched gender hierarchies by reaffirming the principles of dignity, equality, and justice, and by contributing to the construction of a more democratic social order. The inclusion of women in traditionally male-dominated spheres of power disrupts the naturalization of male authority and destabilizes the symbolic codes that

institutional, and relational levels. On the one hand, this entails dismantling gender-oppressive social, economic, and cultural norms—whether formally codified or informally maintained—and pursuing the redistribution of resources and opportunities. On the other hand, it requires engaging both women and men in a process of critical reflection on the power dynamics that shape personal relationships, with the aim of fostering more egalitarian ways of living together. In this sense, reparation must be conceived in connection with broader transitional justice and peacebuilding efforts—yet it nonetheless has a vital role to play in advancing gender justice and enabling long-term social transformation. Although not adopting a gender perspective, see C. CHISARI, *Rethinking transitional justice through the lens of structural violence: Toward a new model of intervention for post-conflict societies*, Doctoral dissertation, University of Milano-Bicocca, 2024, Chapter III.

[37] R. RUBIO-MARÍN, *The gender of Reparations in Transitional Societies*, *cit.*, pp. 71 ff.; R. RUBIO-MARÍN, *Gender and Collective Reparations in the Aftermath of Conflict and Political Repression*, *cit.*, pp. 393-395; S. WLLIAMS, E. PALMER, *Transformative Reparations for Women and Girls at the Extraordinary Chambers in the Courts of Cambodia*, in *International Journal of Transitional Justice*, 10, 2, 2016, pp. 313 ff.; R. RUBIO-MARÍN, P. DE GREIFF, *Women and Reparations*, in *International Journal of Transitional Justice*, 1, 3, 2007, p. 324.

[38] D. HARAWAY, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, in *Feminist Studies*, 14, 3, 1988; S. HARDING, *Whose Science? Whose Knowledge?: Thinking from Women's Lives*, Cornell University Press, New York, 1991, pp. 150-151.

[39] C. CORREA, J. GUILLEROT, L. MAGARRELL, *Reparations and victim participation: A look at the truth commission experience*, in C. FERSTMAN, M. GOETZ, A. STEPHENS (Eds.), *Reparations for victims of genocide, war crimes and crimes against humanity: Systems in place and systems in the making*, Nijhoff, Leiden, Boston, 2009, p. 397.

regulate the distribution of political power[40]. In this sense, women's action functions as a subversive and transformative force.

These perspectives have been recognized in several international instruments[41]. Among them, the most significant is the 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation[42], which marked a turning point in reimagining gender-sensitive reparations by setting out guiding principles for victim-centered and transformative reparative justice. In line with the above, the Nairobi Declaration recognizes that women and girls experience the consequences of armed conflict in specific—and often exacerbated—ways and asserts that reparative responses cannot be gender-neutral. According to the Declaration, reparations must be grounded in victims' lived experiences, be proportionate to the harm suffered, and aim to transform the structural inequalities that shape the lives of women and girls. Notably, it stresses that reparation for women cannot be limited to individual financial compensation. Instead, it must include collective, symbolic, and material interventions that strengthen survivors' autonomy and promote substantive gender equality. The Declaration also highlights the importance of women's active participation in all stages of reparation programs, emphasizing the need to listen to their priorities and ensure equitable access to available forms of support. This approach aims to promote social change and the redistribution of power[43].

4. Between promise and practice.

Building on the above discussion, a gender-sensitive reparation program should be grounded in three interrelated dimensions. First, it must affirm the *recognition* of women as autonomous individuals and equal citizens, while acknowledging the harm they have endured. Second, it should aim to *transform* gendered victim identities, as well as the structural inequalities that sustain violence against women in conflict-affected and post-conflict contexts. Finally, such initiatives must ensure the active and meaningful *participation* of women in both their development and delivery. However, translating these principles into reality is far from straightforward: the practical implementation and design of reparation programs often

[40] C. O'ROURKE, *Transitional justice and gender*, *cit.*, pp. 131-132.

[41] Among the most significant, UNITED NATIONS SECURITY COUNCIL, *Security Council resolution 1325 on women and peace and security*, UN Doc. S/RES/1325, 2000; COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, UN Doc. CEDAW/C/GC/30, 2013; UNITED NATIONS SECRETARY-GENERAL, *Guidance note of the Secretary-General: Reparations for conflict-related sexual violence*, 2014; UNITED NATIONS SECURITY COUNCIL, *Strengthens justice and accountability and calls for a survivor-centered approach in the prevention and response to conflict-related sexual violence*, UN Doc. S/RES/2467, 2019.

[42] *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation*, 2007, March 19–21. Issued at the International Meeting on Women's and Girls' Right to a Remedy and Reparation, Nairobi, Kenya.

[43] On the topic, V. COUILLARD, *The Nairobi Declaration: Redefining Reparations for Women Victims of Sexual Violence*, in *International Journal of Transitional Justice*, 1, 1, 2007.

prove to be complex, uneven, and disconnected from the ambitions articulated in theoretical and normative frameworks.

It is worth noting, first of all, that transitional justice initiatives are beginning to show greater sensitivity to the specific forms of violence experienced by women in conflicts, and to the need for reparations that reflect those experiences. Truth commissions have played a central role in this evolution, with their recommendations often shaping reparation policies and guiding institutional responses[44]. The most recent and arguably most emblematic example is the Colombian Truth Commission (2018–2022), which adopted an intersectional approach that was attentive to the interplay of gender, race, class, and territory. In its final report, the Commission acknowledged the war's differentiated impact on women and the persistence of violence in the aftermath, explicitly referring to the *continuum* of gender-based violence. On these grounds, it called for reparation strategies that move beyond financial compensation to address the relational, communal, and symbolic dimensions of harm[45].

Nevertheless, recognizing the gendered nature of violence in transitional contexts does not lead automatically to action on the ground—not even when formal commitments to address it are in place. Research shows that provisions related to women, girls, and gender issues in peace agreements tend to have lower implementation rates than other measures[46]. This is because "the compact concerning equality … tends to be at the 'soft' and not 'hard' end of legal enforcement" and "the social and political dimensions of inequality and discrimination through which different groups are constituted in transitional societies are generally left to the struggle for enforcement involving parties representing these groups in negotiations"[47]. In Sierra Leone, for instance, the Truth and Reconciliation Commission acknowledged the violence suffered by women and recommended a broad reparation program, including medical, educational, and symbolic support. Yet despite the government's commitment, implementation was minimal, and women received only limited benefits, falling short of both recognition and support[48].

In most cases, however, violence against women continues to receive limited attention—both within the broader framework of peace processes and, more specifically, in reparation programs. Even when gender

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[44] C. O'ROURKE, *Transitional justice and gender*, *cit.*, pp. 125-126.

[45] L. ESTUPIÑÁN-ACHURY, N. D. ANZOLA VIRGÜEZ, *Sin mujeres no habrá verdad ni paz grande en Colombia*, in M. D'AMICO, T. GROPPI, C. NARDOCCI (Eds.), *Women and Peace*, *cit.*, p. 81; D. M. GÓMEZ CORREAL, *Las mujeres y la perspectiva de género en la Comisión de la Verdad en Colombia: Avances y desafíos para el esclarecimiento de la verdad*, in I. MENDIA AZKUE (Ed.), *Enfoque de género en comisiones de la verdad: Experiencias en América Latina y África*, Hegoa, Bilbao, 2020, pp. 141-150.

[46] PeaceRep, *Women & gender. Key findings on when and how women and sexual and gender minorities navigate inclusion across all stages of a peace process*, n.d. (retrieved from PeaceRep: The Peace and Conflict Resolution Evidence Platform website).

[47] F. NÍ AOLÁIN, E. ROONEY, *Underenforcement and Intersectionality: Gendered Aspects of Transition for Women*, in *International Journal of Transitional Justice*, 1, 3, 2007, pp. 345-346.

[48] J. KING, *Gender and reparations in Sierra Leone: The wounds of war remain open*, in R. RUBIO-MARÍN (Ed.), *What happened to the women? Gender and reparations for human rights violations*, Social Science Research Council, New York, 2006, pp. 271 and 276.

is acknowledged, the focus tends to fall almost exclusively on sexual violence or physical harm, while a wide range of other forms of harm are routinely overlooked. These include not only the psychological trauma resulting from conflict, but especially the structural and social conditions under which women must survive and attempt to rebuild a dignified life[49]. Because these aspects are often neglected, they are rarely addressed adequately by reparation mechanisms, which therefore remain partial and insufficient in delivering meaningful relief to victims. Crucially, by failing to engage with women's socio-economic and cultural realities, such initiatives are unable to challenge the gender *status quo* and consequently fall short of fostering genuine transformation of the structural inequalities that persist in post-conflict settings[50].

To make matters worse, reparation programs aimed at women—particularly symbolic and collective measures—often depoliticize the violence they have endured, reducing it to a matter of personal suffering. Moreover, women's experiences are frequently framed through essential narratives that emphasize traditional roles of care and sacrifice, portraying them as passive victims or grieving mothers rather than political subjects. This dynamic is especially evident in commemorative practices, where men are typically depicted as heroic and agentic figures, while women—when present at all—appear as mourners or individuals in need of protection[51]. While symbolic measures may offer some degree of recognition and psychological relief, they risk reinforcing the same patriarchal narratives and power structures that enable violence in the first place when disconnected from a genuine engagement with women's lived realities. Ultimately, this may prevent women from being recognized as agents of change, both in shaping their own lives and in contributing to the reconstruction of post-conflict societies[52].

The lack of recognition of women's agency, along with the overly narrow focus on gender-based violence and discrimination, is also linked to their limited participation in both peace processes and the development of reparation programs. While women are often the first to raise their voices in support of peace, in 2024 they represented only 7% of negotiators, 14% of mediators, and 20% of signatories in

[49] Such as restricted access to economic and productive resources, social stigmatization, material impoverishment, and imposed redefinition of family and community roles. See C. BELL, K. MCNICHOLL, *Principled Pragmatism and the 'Inclusion Project': Implementing a Gender Perspective in Peace Agreements*, in *Feminists@Law*, 9, 1, 2019, p. 13; C. BELL, C. O'ROURKE, *Peace Agreements or 'Pieces of Paper'? The Impact of UNSC Resolution 1325 on Peace Processes and their Agreements*, in *International and Comparative Law Quarterly*, 59, 4, 2010, p. 968; F. NÍ AOLÁIN, *Transformative Gender Justice?*, in P. GREADY, S. ROBINS (Eds.), *From Transitional to Transformative Justice*, Cambridge University Press, Cambridge, 2019, p. 162; K. SIKKINK, H. CLAPP, D. MARÍN-LÓPEZ, A. SCHMIDT, *Gender and Transitional Justice: Explaining Global Trends*, in *The International Journal of Transitional Justice*, 18, 2024, p. 399.

[50] R. UPRIMNY YEPES, *Transformative Reparations of Massive Gross Human Rights Violations*, *cit.*, pp. 643-645. As previously mentioned in footnote 36 of this work, transforming the *status quo* cannot be achieved through reparative measures alone. Structural change demands systemic, institutional, and relational interventions across all pillars of transitional justice. This does not mean, however, that reparative measures cannot also play an important role.

[51] B. HAMBER, I. PALMARY, *Gender, Memorialization, and Symbolic Reparations*, *cit.*, pp. 339-343.

[52] B. HAMBER, I. PALMARY, *Gender, Memorialization, and Symbolic Reparations*, *op. cit.*, pp. 344 ff.

peace and ceasefire agreements[53]. Excluding the case of Colombia, which stands out as a unique example of high female participation[54], the percentage of women signatories drops to just 7%[55]. Although research highlights that simply 'having women in the negotiation rooms' does not automatically ensure attention to gender-related concerns, it also demonstrates that their presence is positively correlated with more inclusive peace agreements that reflect women's perspectives and needs[56]. The key point seems to be that when women are excluded from the arenas where transitional and reparation priorities are defined, their lived experiences and demands are likewise excluded from the frameworks guiding transitional justice. Importantly, this exclusion both reflects and reinforces the gendered power structures that systematically kept women out of decision-making spaces before and during the conflict. In doing so, it entrenches pre-existing male-dominated power dynamics and ultimately hinders the transformation of women's roles and identities in post-conflict societies[57].

Faced with this scenario, it is worth asking what lies behind the ongoing challenges in adopting a gender-sensitive approach in reparation programs—one that includes recognition, transformation, and participation. While the marginalization of women and their concerns are undoubtedly rooted in the frequently patriarchal character of (post-)conflict societies, they may also stem from the prevailing paradigms that shape the field of transitional justice itself. In particular, they seem to be closely linked to the liberal, top-down model that has come to dominate transitional justice practice.

Over time, transitional justice has developed with a strong focus on strengthening democratic institutions, promoting a market-oriented economy, and advancing civil and political rights, at the expense of social, economic, and cultural rights, as well as the structural causes of conflict[58]. This imbalance extends to

[53] UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *Facts and figures: Women, peace, and security*, 2024 (retrieved from UN Women website). See also S. N. ANDERLINI, *Women building peace: What they do, why it matters*, Lynne Rienner Publishers, Boulder, 2007, pp. 53 ff. With specific reference to reparation programs, see B. HAMBER, I. PALMARY, *Gender, Memorialization, and Symbolic Reparations*, *cit.*, pp. 354-355.

[54] On the topic, L. ESTUPIÑÁN-ACHURY, N. D. ANZOLA VIRGÜEZ, *cit.*

[55] UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *Facts and figures*, *cit.* On the limited representation of women in both the design and implementation of reparation programs intended to address their own experiences and needs, see F. NÍ AOLÁIN, C. O'ROURKE, A. SWAINE, *Transforming Reparations for Conflict-Related Sexual Violence*, *cit.*, pp. 131-133.

[56] E. GOOD, *Power Over Presence: Women's Representation in Comprehensive Peace Negotiations and Gender Provision Outcomes*, in *American Political Science Review*, 2024, p. 8; E. PORTER, *Women, Political Decision-Making, and Peace-Building*, in *Global Change, Peace & Security*, 15, 3, p. 250.

[57] C. O'ROURKE, *Transitional justice and gender*, *cit.*, pp. 131-132.

[58] L. ARBOUR, *Economic and Social Justice for Societies in Transition*, in *International Law and Politics*, 40, 1, 2007, pp. 4-10; M. EVANS, *Structural Violence, Socioeconomic Rights, and Transformative Justice*, in *Journal of Human Rights*, 15, 1, 2016, pp. 4-5; P. GREADY, S. ROBINS, *From Transitional to Transformative Justice: A New Agenda for Practice*, in *International Journal of Transitional Justice*, 8, 3, 2014, p. 341; D. N. SHARP, *Addressing Economic Violence in Times of Transition: Towards a Positive Paradigm for Transitional Justice*, in *Fordham International Law Journal*, 35, 3, 2012, pp. 792-801; L. WALDORF, *Anticipating the Past: Transitional Justice and Socio-Economic Wrongs*, in *Social & Legal Studies*, 21, 2, 2012, p. 173. It is worth noting that, as highlighted *supra* in Section 2, the concept of reparation originated and developed within the judicial sphere, particularly in the context of human rights jurisprudence. As is well known, there exists a longstanding imbalance between civil and political rights and economic and social rights in the field of human rights—an imbalance reflected in

reparation programs and has specific implications for women for two main reasons. First, civil and political rights violations are most often experienced by men during conflict, whereas violations of economic, social, and cultural rights—such as forced displacement or the loss of livelihoods—tend to disproportionately affect women[59]. Second, this focus reflects a narrow understanding of violence—one that centers primarily on "direct violence"[60], while ignoring the deeper systems and dynamics that normalize injustice and contribute, directly or indirectly, to the outbreak of conflict[61]. This helps explain why reparation programs and peacebuilding strategies focus mainly on sexual violence or other forms of physical harm experienced by women, while systemic harms and the structural causes of gender-based violence often remain unaddressed.

The emphasis on sexual violence may also be related to how, under a liberal paradigm, the field of transitional justice has progressively favored institutional mechanisms operating through "supra-state and 'state-like' structures" to deal with the past, such as tribunals and truth commissions[62]. By their very nature, these mechanisms adopt a legalistic framework that fails to engage with structural inequalities. Specifically, "[c]riminal trials [tend] to cast conflicts in terms of identifiable criminal acts against the victim's body integrity, formalizing an attitude that the conflict revolved more around physical violence than unequal social structures"[63]. Truth commissions similarly concentrate on "the 'most serious' violations, a standard set with reference to law"[64], thereby overlooking broader patterns of systemic abuse. Within this context, it is worth noting that this 'violation-centric approach' presents clear obstacles to achieving gender-sensitive and transformative outcomes. Indeed, it tends to frame women primarily as victims (of a norm violation), which can have a retraumatizing effect and perpetuate reductive narratives

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the distinction between first- and second-generation rights. More broadly, "[h]uman rights foregrounds problems of participation and procedure, at the expense of distribution", with the result that economic and social rights have historically emerged as "aspirational principles" rather than "enforceable rights". These same biases have been reproduced within human rights-oriented transitional justice frameworks. See D. KENNEDY, *The International Human Rights Movement: Part of the Problem?*, in *Harvard Human Rights Journal*, 15, 2002, p. 109; E. WILES, *Aspirational Principles or Enforceable Rights? The Future for Socio-Economic Rights in National Law*, in *American University International Law Review*, 22, 1, 2006, p. 64.

[59] R. RUBIO-MARÍN, P. DE GREIFF, *Women and Reparations*, *cit*., p. 327.

[60] "Direct violence" refers to the visible manifestations of violence, including acts that inflict physical harm—such as rape and murder—or that restrict individuals' ability to act, such as exclusion from political participation. It does not, however, account for economic, social, and cultural violations, which remain invisible. These forms of harm reflect broader patterns of injustice in society, characterized by unequal life chances—a condition commonly described as "structural violence". See J. GALTUNG, *Violence, Peace, and Peace Research*, *cit*. For a detailed analysis of the concept of structural violence in transitional justice contexts, see C. CHISARI, *Revisiting structural violence: Galtung's legacy and power relations*, in *Scienza e Pace*, 15, 2, 2024, pp. 1-24.

[61] Z. MILLER, *Effects of Invisibility: In Search of the 'Economic' in Transitional Justice*, in *The International Journal of Transitional Justice*, 2, 2008, p. 271; D. N. SHARP, *Addressing Economic Violence in Times of Transition*, *cit.*, pp. 792-801.

[62] K. McEVOY, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, in *Journal of Law and Society*, 34, 4, 2007, p. 421.

[63] P. McAULIFFE, *Transformative Transitional Justice and the Malleability of Post-Conflict States*, Edward Elgar, Cheltenham, 2017, p. 38.

[64] C. CAMPBELL, C. TURNER, *Utopia and the Doubters: Truth, Transition and the Law*, in *Legal Studies*, 28, 3, 2008, p. 377.

on their identities[65]. In turn, this indirectly reinforces rigid gender binaries in which women are seen only as passive and helpless, while men take on the roles of either perpetrators or saviors[66].

Finally, the institutionalization of transitional justice mechanisms has resulted in a growing detachment of individuals and communities from the very initiatives intended to address past harm, in the sense that those most directly affected by violence and injustice are often left out of shaping, managing, or even participating in decisions about how such harms should be acknowledged and addressed[67]. Thus, while women have historically been excluded from the design and implementation of reparation programs specifically as women, this exclusion must also be understood in light of a broader tendency within the field to adopt a top-down approach.

In response to these limitations, a growing body of scholarship calls for a fundamental rethinking of transitional justice—one that goes beyond the pursuit of peace through the redress of individual violations to confront the structural inequalities that sustain them. In line with this shift from "negative" to "positive" peace[68], scholars increasingly advocate for a transformative and participatory approach that engages with the material conditions and power relations underpinning injustice. From this perspective, many contributions highlight the value of bottom-up processes that give communities a meaningful role in identifying priorities and shaping responses. This requires moving beyond centralized institutional mechanisms and recognizing the importance of local knowledge and collective forms of organization[69]. On this basis, reparations for women must go beyond one-size-fits-all legal frameworks. Instead, they should reflect the range of women's experiences and identities, enabling forms of justice that emerge from the specific social and cultural contexts in which they live. Drawing on local knowledge and community practices makes it possible to develop reparations that are more closely attuned to these realities and, in turn, more meaningful and transformative.

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[65] K. FRANKE, *Gendered Subjects of Transitional Justice*, in *Columbia Journal of Gender and Law*, 15, 3, 2006, pp. 282-283.

[66] N. HENRY, *The fixation on wartime rape: Feminist critique and international criminal law*, in *Social & Legal Studies*, 23, 1, 2014, pp. 98 ff.

[67] GREADY, S. ROBINS, *From transitional to transformative justice: A New Agenda for Practice*, *cit.*, pp. 350-354; P. LUNDY, M. McGOVERN, *Whose Justice? Rethinking Transitional Justice from the Bottom Up*, in *Journal of Law and Society*, 35, 2, 2008, pp. 275-276; K. McEVOY, *Beyond Legalism*, *cit.*, pp. 421-424.

[68] Peace does not solely entail the absence of large-scale violence or individual violations (so-called negative peace); it also signifies the absence of conditions that could imply violence (so-called positive peace). See J. GALTUNG, *Violence, Peace, and Peace Research*, *cit.*, p. 183.

[69] J. BALINT, J. EVANS, N. McMILLAN, *Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach*, in *The International Journal of Transitional Justice*, 8, 2014, pp. 198 ff.; M. EVANS, *Structural Violence, Socioeconomic Rights, and Transformative Justice*, *cit.*, pp. 5-9; P. FIRCHOW, Y. SELIM, *Meaningful Engagement from the Bottom-Up? Taking Stock of Participation in Transitional Justice Processes*, in *International Journal of Transitional Justice*, 16, 2, 2022, pp. 2 ff.; P. GREADY, S. ROBINS, *From Transitional to Transformative Justice: A New Agenda for Practice*, *cit.*, p. 354; P. LUNDY, M. McGOVERN, *Whose Justice?*, *op. cit.* pp. 277 ff.; K. McEVOY, *Beyond Legalism*, *op. cit.*, pp. 430-432.

5. Women shaping their own reparation through artistic practice.

As previously discussed, although both academic research and international frameworks stress the importance of gender-sensitive approaches to reparation, initiatives aimed at women often fall short in terms of recognition, meaningful transformation, and active participation. This persistent gap is not only the product of resource constraints and entrenched patriarchal dynamics within (post-)conflict societies, but also of the liberal and institutional framework that has long shaped transitional justice practice—a framework more conducive to maintaining negative peace than to enabling deeper social transformation. By contrast, the pursuit of positive peace requires measures rooted in local contexts, designed to be participatory and attentive to the reconstruction of social relations.

Against this backdrop, women themselves have begun to articulate alternative visions of justice and reparation from the ground up. In many contexts, this has taken the form of community-based initiatives that create networks of solidarity, mutual aid, and collective care—practices that not only compensate for institutional shortcomings but also cultivate relational agency and everyday forms of resistance[70]. The *City of Women* in Turbaco, Colombia, is illustrative of this dynamic: a self-organized settlement founded by displaced women that integrates housing reconstruction with educational projects and income-generating activities, all developed independently of state-led frameworks[71]. Similarly, in Guatemala, CONAVIGUA (Coordinadora Nacional de Viudas de Guatemala) has long led exhumations, community support, and psychosocial accompaniment, particularly for Indigenous women whose losses were largely neglected by state-led processes[72]. In each of these cases, women have taken the lead in shaping their own approaches to repair and acknowledgment, combining material support with relational healing and symbolic recognition.

Situated within this broader landscape of culturally grounded responses, certain experiences stand out for their powerful role in bringing women's voices and perspectives to the forefront. These are creative, art-based practices that arise directly from women's lived realities of violence and conflict, transforming personal and collective pain into shared narratives that challenge institutional silences and enrich bottom-up forms of reparation. Far from functioning as merely symbolic gestures, they operate as relational practices that bridge together memory, protest, and healing, making women's agency visible where formal

[70] S. N. ANDERLINI, *Women Building Peace*, *cit.*, pp. 54-58; M. D'AMICO, T. GROPPI, C. NARDOCCI (Eds.), *Women and Peace*, *cit.*, Part two. Recent examples include Yemeni women who negotiated access to clean water for civilians amid ongoing violence, and the formation in 2023 of the *Peace for Sudan Platform*—a coalition of more than 49 women-led organizations calling for a more inclusive peace process. See UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, *Facts and figures*, *cit.*

[71] Project developed by the League of Displaced Women (Liga de Mujeres Desplazadas, Colombia). For more information, see the article published in The Guardian.

[72] For more information, see the website of the organization Coordinadora Nacional de Viudas de Guatemala – CONAVIGUA.

mechanisms have often failed. Concrete examples help illustrate this. One such case is the *arpilleras* of Chile—handmade tapestries crafted by women during and after the Pinochet dictatorship, which depict scenes of everyday life under repression. These textiles served both as acts of defiance and as vehicles of memory, documenting loss, resistance, and survival[73]. Another compelling example is *Mother's Scarf*, a memorial installation launched in 2022 by the Mothers of Srebrenica. Made from thousands of knotted scarves and shawls, the work expresses collective mourning and resilience while honoring the memory of those killed in the 1995 genocide[74].

While cultural and artistic practices—such as visual arts, performance, and music—have not traditionally held a central place in transitional justice frameworks, their peacebuilding value is increasingly being recognized. For instance, some scholars have highlighted the deterrent potential of art: by humanizing both victims and perpetrators, art draws audiences into direct, sensory engagement with the suffering caused by war and human rights violations. In doing so, it fosters a deeper emotional understanding that may discourage the recurrence of violence and injustice[75]. In addition, art can facilitate the rebuilding of community bonds and promote peaceful dialogue about the past, acting as a mediating tool: "[a]rt can catalyse a shift into empathy with groups of people divided over a range of charged social issues"[76]. Equally important, art has also proven capable of conveying forms of truth that conventional legal tools struggle to capture—as seen, for example, in Indigenous land claims where paintings have served as legal maps and embodiments of ancestral law[77]. Finally, art offers a non-verbal space for victims to express themselves freely, validating their experiences and fostering emotional healing. At the same time, it opens the way for alternative narratives, inviting critical engagement with the past and giving voice to perspectives often excluded from official accounts. In doing so, it may help challenge the dominant symbolic order and support broader structural change[78].

Taken together, these insights suggest that art—understood as a socially engaged, culturally embedded, and emotionally situated practice—can play a crucial role in shaping gender-sensitive approaches to

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[73] J. ADAMS, *Art against dictatorship: Making and exporting arpilleras under Pinochet*, University of Texas Press, Austin, 2013.
[74] J. ANGELL, *'Mother's Scarf': A creative commemoration for the women of Srebrenica*, in Balkan Diskurs, 2022, August 5 (retrieved from Balkan Diskurs website).
[75] R. MANI, *Women, art and post-conflict justice*, in *International Criminal Law Review*, 11, 3, 2011, pp. 551-552.
[76] M. LEBARON, *Introduction*, in M. LEBARON, J. SARRA (Eds.), *Changing our worlds: Arts as transformative practice*, AFRICAN SUN MeDIA, Stellenbosch, 2018, p. 18.
[77] S. VERMEYLEN, *Canvases as legal maps in native title claims*, in U. DIECKMANN (Ed.), *Mapping the Unmappable? Cartographic Explorations with Indigenous Peoples in Africa*, Transcript Verlag, 2021, pp. 261–290.
[78] J. BOESTEN, H. SCANLON (Eds.), *Gender, transitional justice and memorial arts: Global perspectives on commemoration and mobilization*, Routledge, Oxon, New York, 2021; E. FRASCO, L. SHERR, M. C. DEDIOS SANGUINETI, N. VERA SAN JUAN, R. BURGESS, *The impact of creative arts-based interventions for mental health in conflict-affected contexts: A systematic narrative review*, in *Mental Health*, 7, 2025; E. GARNSEY, *Rewinding and unwinding: Art and justice in times of political transition*, in *International Journal of Transitional Justice*, 10, 3, 2016; A. KURZE, C. K. LAMONT (Eds.), *New critical spaces in transitional justice: Gender, art, and memory*, Indiana University Press, Bloomington, 2019, Part I; P. D. RUSH, O. SIMIĆ (Eds.), *The arts of transitional justice: Culture, activism, and memory after atrocity*, Springer, New York, 2014.

reparation, rooted in recognition, transformation, and participation. The next two sections develop this argument in more detail. Section 5.1. turns to theory, examining how artistic practices can acknowledge and begin to address women's experiences of harm, foster their agency, and challenge the structures that sustain gender-based violence, including by creating spaces in which women's voices and experiences acquire public resonance. Section 5.2. then moves from theory to practice, analyzing *Fragmentos, Espacio de Arte y Memoria*—a counter-monument in Bogotá co-created by women survivors of sexual violence during the recent armed conflict—to explore how the reparative potential of art can be realized in concrete terms.

5.1. The role of art in engendering reparation.

Since ancient times, art has transcended the realm of aesthetics. In the face of personal or collective crises, individuals and communities have turned to expressive forms such as music, dance, storytelling, and the visual arts to process their lived experiences and help rebuild social cohesion[79]. In more recent decades, the potential of artistic practices as resources for emotional, psychological, and relational survival has also been increasingly recognized within therapeutic settings. Art has become an effective tool in interventions aimed at supporting and rehabilitating individuals who have endured traumatic events, including gender-based violence such as sexual assault, domestic abuse, and trafficking for sexual exploitation[80]. Within these contexts, art[81] and art therapy[82]—when grounded in a feminist framework—have proven effective

[79] Among many others, E. DISSANAYAKE, *Homo Aestheticus: Where Art Comes From and Why*, University of Washington Press, Seattle, 1995.

[80] Among others, S. L. BROOKE, *Art therapy: An approach to working with sexual abuse survivors*, in *The Arts in Psychotherapy*, 22, 5, 1995; C. A. MALCHIODI, G. MILLER, *Art therapy and domestic violence*, in C. A. MALCHIODI (Ed.), *Handbook of art therapy* (2nd ed.). Guilford Press, New York, 2011. Art can also be a valuable means of more deeply exploring the experiences of abuse suffered by women, as discussed in J. BIRD, *Art therapy, arts-based research and transitional stories of domestic violence and abuse*, in *International Journal of Art Therapy*, 2017.

[81] Artistic expression and the representation of women—or female experience—in art have traditionally reflected deeply patriarchal and male-dominated dynamics. Women have not been active protagonists in the artistic narratives that concern them, but rather the objects of a voyeuristic, objectifying "male gaze". They are positioned as something to be looked at and assigned meaning, rather than as subjects with their own agency—capable of constructing meaning, identity, and visions of the world. This dynamic is especially evident in painting and cinema, where female figures are often portrayed as objects of visual pleasure. Within this framework, the (male, heterosexual) viewer occupies the role of active, looking subject, while the woman is represented passively, as an eroticized visual object. This mechanism reflects broader gendered power relations: the act of looking has historically been a privilege of those in positions of power (men), while being looked at is the role assigned to those subjected to it (women). See L. MULVEY, *Visual pleasure and narrative cinema*, in *Screen*, 16, 3, 1975. In contrast, feminine and feminist aesthetics articulate a plural and "female" gaze that subverts the passive role traditionally assigned to women, restoring their agency as active subjects. This perspective rejects the objectified, passive depiction of the female body and instead foregrounds women's subjective, emotional, and relational experiences. The female gaze does not simply invert traditional roles; rather, it seeks to generate new representational forms that render visible female will, complexity, and agency. See, among others, I. BREY, *Le regard féminin: Une révolution à l'écran*, Éditions de l'Olivier, Paris, 2020; B. HOOKS, *Black Looks: Race and Representation*, South End Press, Boston, 1992.

[82] Traditional therapeutic approaches often fall short in adequately addressing gender-specific concerns. Many models overlook the ways in which gendered power dynamics, structural inequalities, and social expectations shape women's

not only in helping women confront and process their histories of victimization, but also in fostering both personal and systemic transformations aimed at empowerment and the dismantling of structural and gender-based inequalities.

A deeper examination begins with the distinctive features of artistic expression. First, art offers an *immediate* and *accessible* mode of communication, particularly significant for survivors of severe violence. Traumatic events, such as those related to gender-based violence, often lead to disorientation and impair the ability to articulate what has happened through words alone. In such cases, art serves as a medium to express profound emotional truths and facilitate reconnection with the self[83]. Along these lines, studies involving women survivors of sexual abuse show that painting can render visible what would otherwise remain hidden and unspoken, while dance helps restore embodied awareness. These practices provide a more direct and safer engagement with trauma, enabling survivors to begin integrating their painful experiences into their narratives without becoming overwhelmed[84].

Second, art offers an *authentic* space for self-expression, allowing survivors to articulate their stories through forms that are meaningful to them. This process holds particular significance for women, as gender-based violence is often represented—and socially perceived—through abstract and stereotypical accounts shaped by the dominant patriarchal culture. Such portrayals risk flattening the complexity of individual realities and may contribute to a form of re-victimization by reproducing patterns and images that fail to accurately reflect the lived experiences of survivors[85].

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lived experiences—particularly in contexts of violence, trauma, and marginalization. As a result, therapy may risk individualizing problems that are deeply embedded in broader socio-cultural structures, rather than acknowledging and addressing the systemic nature of women's suffering. See, among others, L. S. BROWN, *Subversive Dialogues: Theory in Feminist Therapy*, Basic Books, New York, 1994. Feminist approaches to therapy emerged in response to these limitations, emphasizing the need to situate personal experiences within broader social and political contexts. Rather than treating the individual in isolation, feminist therapy seeks to reveal how systems of oppression, patriarchy, and gender norms contribute to psychological distress. It promotes egalitarian relationships between therapist and client, values the client's voice and lived experience, and often integrates activism and social change into the therapeutic process. In doing so, feminist therapy not only fosters individual empowerment but also challenges the structural conditions that perpetuate gender-based harm. For further discussion, C. J. BLACK, *Translating Principles into Practice: Implementing the Feminist and Strengths Perspectives in Work with Battered Women*, in *Affilia*, 18, 3, 2003; C. Z. ENNS, *Feminist Theories and Feminist Psychotherapies: Origins, Themes, and Diversity*, Haworth Press, Binghamton, 2004.

[83] C. A. MALCHIODI, *Trauma and Expressive Arts Therapy. Brain, Body, and Imagination in the Healing Process*, The Guilford Press, New York, London, 2020, pp. 2-12; C. A. MALCHIODI, G. MILLER, *Art therapy and domestic violence*, *cit.*, p. 336.

[84] C. EASTWOOD, *Art therapy with women with borderline personality disorder: A feminist perspective*, in *International Journal of Art Therapy*, 17, 3, 2012, p. 108; L. J. MILLS, J. C. DANILUK, *Her body speaks: The experience of dance therapy for women survivors of child sexual abuse*, in *Journal of Counseling & Development*, 80, 1, 2002, p. 82.

[85] P. DE GREIFF, *Preface: On Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes*, in C. RAMÍREZ-BARAT (Ed.), *Transitional Justice, Culture, and Society: Beyond Outreach*, Social Science Research Council, New York, 2014, pp. 18-20. In this light, the case of a group of Sierra Leonean women who complemented their formal court testimonies with a theatrical performance is compelling. As one of the participants stated, this artistic act allowed them to communicate the emotional weight and intricacy of their stories with greater resonance, fostering deeper understanding among the court personnel. See S. STEPAKOFF, *Telling and Showing: Witnesses Represent Sierra Leone's War Atrocities in Court and Onstage*, in *TDR: The Drama Review*, 52, 1, 2008, p. 22.

From these perspectives, art emerges as a tool of recognition and healing: it is an active process of working through victimization, in which the artist acknowledges the emotional and existential ruptures caused by violence and begins to confront them. At the same time, the emancipatory and transformative potential of art begins to unfold. By *actively* engaging with trauma, artistic creation enables women to distance themselves from the traditional image of the *passive* victim, thereby restoring their sense of agency.

More precisely, the emancipatory power of art lies first and foremost in the very act of creation. Giving shape to something new out of traumatic experience allows women to reframe what happened in ways that feel more manageable. Through creative engagement, they may begin to see how emotional turmoil can be contained, reinterpreted, or even reclaimed. Such a process fosters self-esteem, strengthens a sense of inner resilience, and helps restore trust in one's inner resources—key steps in rebuilding agency[86].

At the same time, art can be emancipatory for women as it generates awareness. It can help them realize the unequal power structures that shape their lives—structures that confine them to positions of subordination and control. Such awareness emerges through a process of symbolic externalization, in which images and materials give tangible form to experiences of marginalization, constraint, and violence. By making these dynamics visible, artistic practice enables personal reflection on one's identity, lived reality, and social role as a woman and can support transformative change[87].

Finally, art is also emancipatory and transformative in that it serves as a concrete tool for empowerment. An example comes from an embroidery workshop with Bedouin women in southern Israel, where one participant created two dolls representing a sheik and his wife. Although the wife appears submissive, she is shown ignoring her husband's commands. The irony embedded in the scene turns the embroidery into a subtle act of resistance, allowing the woman to express her defiance of patriarchal norms in a way that was immediately understood within the group[88]. Narrating one's condition of pain or subjugation through aesthetic forms thus opens the possibility of initiating a path of identity reconstruction.

In this context, it is important to note that artistic expression is, by nature, outward facing: through the creative act, intimate experiences are shared with an audience, who in turn engages in a personal

[86] M. FRANKLIN, *Art Therapy and Self-Esteem*, in *Art Therapy: Journal of the American Art Therapy Association*, 9, 2, 1992, p. 80; See also S. L. BROOKE, *Art therapy*, *cit.*, pp. 448-449.

[87] K. WRIGHY, *The Re/Imaginings in Art Psychotherapy for Girls and Young Women*, in A. HUET, L. KAPITAN (Eds.), *International Advances in Art Therapy Research and Practice: The Emerging Picture*, Cambridge Scholars Publishing, Newcastle upon Tyne, 2021, pp. 297-302. See also S. HOGAN, *Problems of identity: Deconstructing gender in art therapy*, in S. HOGAN (Ed.), *Revisiting feminist approaches to art therapy*, Berghahn Books, Oxford, New York, 2012, pp. 28-29.

[88] M. KATOSHEVSKUI, E. HUSS, *Using crafts in art therapy through an intersectional feminist empowerment lens: The case of Bedouin embroidery in Israel*, in L. LEONE (Ed.), *Craft in Art Therapy: Diverse Approaches to the Transformative Power of Craft Materials and Methods*, Routledge, New York, 2020, pp. 150-151.

reinterpretation of what is presented[89]. This dynamic positions art as a collective and relational space, with significant implications at multiple levels – both in terms of recognition and in fostering personal and systemic transformation.

To begin with, the encounter with a work of art elicits a sensory response. Before any intellectual understanding can take shape, the viewer experiences the artwork physically—they 'feel' it. This visceral engagement enables the emotions embedded in the piece to be recognized and even held by another person. In the case of a work that conveys a woman's pain, such moments of empathic connection allow trauma to begin emerging from isolation, opening up the possibility for psychological repair[90].

This proximity, however, is not limited to feeling alone. From the perspective of the artist—a woman who has experienced violence or oppression—having her pain acknowledged by the viewer can initiate a redefinition of subjectivity. After all, subjectivity is shaped in relation to others: revealing one's suffering, sharing it, and seeing it mirrored in another's emotional response enables the artist to begin to reimagine herself outside the frame of victimhood[91]. From the viewer's standpoint, on the other hand, empathy becomes a doorway to thought. The sensory impact of the artwork can spark critical reflection, prompting an internal dialogue about the work's meaning and the realities it exposes[92]. In this way, art becomes a catalyst for awareness, allowing the viewer to perceive aspects of reality that may have previously gone unrecognized[93].

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89 A. CIURLO, *L'arte nella costruzione della memoria collettiva colombiana: l'apporto della diaspora in Europa*, in *REMHU, Revista Interdisciplinar Da Mobilidade Humana*, 29, 62, 2021, p. 68.

90 In this regard, the literature on art therapy emphasizes the crucial role of the encounter between the trauma survivor and the therapist. Art therapy becomes a true healing process when the individual undergoing treatment is able to give shape to their trauma through creative expression. In this dynamic, the therapist does not act as a distant evaluator but as an empathetic, attuned witness—someone who receives, contains, and validates what is being expressed. The therapeutic relationship thus becomes a relational space where pain can be externalized and symbolized, and where the empathetic presence of another person makes it possible for the survivor to begin integrating the traumatic experience, no longer in isolation but through connection with another human being. See, among others, H. BURT, *Women, Art Therapy and Feminist Theories of Development*, in S. HOGAN (Ed.), *Revisiting feminist approaches to art therapy*, *cit.*, pp. 74-75. Yet this kind of empathetic connection is not limited to the therapeutic dyad. Trauma can also be processed and shared through art in public or community spaces, where the presence of a broader audience becomes part of the healing process. See C. A. MALCHIODI, *Trauma and Expressive Arts Therapy*, *cit.*, pp. 118-122.

91 Not in explicit reference to art, see J. BUTLER, *Giving an Account of Oneself*, Fordham University Press, New York, 2005.

92 J. BENNETT, *Empathic Vision: Affect, Trauma, and Contemporary Art*, Stanford University Press, Stanford, 2005, pp. 7 and 35 ff.

93 An example of this process can be seen in *Wila Patjharu/Sobre la sangre* (2017) by Teresa Margolles. The work consists of a large textile soaked with the blood of ten women murdered in acts of femicide in La Paz, Bolivia, and embroidered by local artisans using traditional motifs from Bolivian folk-dance costumes. The piece confronts how gender-based violence is often hidden or downplayed beneath layers of cultural and folkloric expression. The use of blood creates a powerful sensory shock that engages the viewer emotionally and, subsequently, draws them into a critical reflection on the systemic violence and injustice it evokes. See ARTEINFORMADO, *Sobre la sangre* (retrieved from the ArteInformado website); J. SKELLY, *Hard touch: Gore capitalism and Teresa Margolles's soft interventions*, in *H-ART: Revista de Historia, Teoría y Crítica de Arte*, 6, 1, 2020.

The sensory and cognitive impact of art can therefore open pathways to generative insight, ultimately serving as a vehicle for political critique and social transformation. Art is never neutral; it positions itself within the visible field and has the capacity to reveal the contradictions, exclusions, and conflicts that shape societies. In doing so, it contributes to the construction, legitimation, or contestation of the dominant symbolic order[94]. As such, art is a space of confrontation, resistance, and collective transformation. This is especially true in the case of works created by women who have been silenced, oppressed, or subjected to gender-based violence. Here, the artwork is not merely a representation of the female experience but allows such experiences to emerge and articulates new possibilities for existence in the public sphere. After all, "[t]he function of art is to do more than tell it like it is—it's to imagine what is possible"[95].

5.2. From weapons to resistance: the case of *Fragmentos, Espacio de Arte y Memoria*.

Gender-based violence has been one of the most pervasive and devastating features of the Colombian conflict. Armed groups systematically employed sexual violence as a weapon of war, not only to intimidate communities and assert territorial control, but also to reinforce traditional gender roles and perpetuate patriarchal structures through the domination of women's bodies. Moreover, Colombian women were subjected to reproductive violence, forced displacement, land dispossession, the loss of family members, and social stigmatization, all of which deepened their marginalization and undermined prospects for post-conflict reconciliation[96].

At the same time, the Colombian case stands out for the notable attention paid to gender-based violence in the peace process, as well as for the meaningful involvement of women in it. During the peace negotiations between the Colombian government and the FARC in Havana, women participated in a significant and unprecedented way, representing not only the government and the guerrillas but also victims' organizations[97]. Although the *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera* [Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace], signed in 2016 and revised in 2017, partially weakened the momentum for gender justice that had emerged during the talks, it nevertheless preserved opportunities for developing

[94] C. MOUFFE, *Artistic activism and agonistic spaces*, in *Art & Research*, 1, 2 (retrieved from the Journal website).

[95] B. HOOKS, *Art on my mind: Visual politics*, The New Press, New York, 1995, p. 128.

[96] CENTRO NACIONAL DE MEMORIA HISTÓRICA, *La guerra inscrita en el cuerpo: Informe nacional de violencia sexual en el conflicto armado*, 2017, pp. 47-54.

[97] As part of this process, the Gender Subcommission was established in 2014 to review all documents produced during the peace negotiations, ensuring their alignment with gender-sensitive language and provisions. See L. ESTUPIÑÁN-ACHURY, N. D. ANZOLA VIRGÜEZ, *cit.*, p. 76.

gender-sensitive approaches. Within this broader framework, artistic practices began to emerge as forms of both memorialization and reparation for Colombian women.

The Colombian Peace Agreement is structured around six core components: 1) Comprehensive rural reform; 2) Political participation; 3) Ceasefire, cessation of hostilities, and laying down of arms; 4) Solution to the problem of illicit drugs; 5) Victims; and 6) Implementation and verification mechanisms. Art as a peace-building practice is most directly connected to two of these components. Specifically, point 5 (Victims) emphasizes the importance of symbolic reparations, including commemorative and inclusive initiatives aimed at restoring victims' dignity. Even more crucial, however, is point 3 (Ceasefire, cessation of hostilities, and laying down of arms), which calls for the surrender and destruction of weapons by the FARC-EP and their symbolic transformation into three commemorative monuments—one at the United Nations headquarters, one in the Republic of Cuba, and one in Colombia (para. 3.1.7). Among these three monuments, *Fragmentos, Espacio de Arte y Memoria*, the one created in Colombia, is particularly significant for its gendered approach to memory and symbolic reparation.

Fig. 1: *Fragmentos*, entrance of the building[98].

Fragmentos is a site-specific art installation located within the ruins of a 19th-century colonial house. The space features raw white walls and relatively high ceilings, with the ruins carefully preserved and made visible from within through large glass panels. This design choice underscores the installation's character as a liminal space—"[a] space that remains somewhere between the past and the present, life and death, the ruin and something that dwells on within"[99]. The installation comprises three rooms: two host temporary exhibitions, while the third projects a video documenting the creation process of the work. At

[98] Source: Website of Granada Garcés Arquitectos, the studio in charge of the architectural and musicographic intervention of *Fragmentos*.

[99] M. D. R. ACOSTA LÓPEZ, *Rendering the unheard-of believable: On Fragmentos by Doris Salcedo and Duelos by Clemencia Echeverri*, in L. BRITTO, A. R. LÓPEZ-PEDREROS (Eds.), *Histories of perplexity: Colombia, 1970s–2010s*, Routledge, New York, Abingdon, 2024, p. 404.

its core lies a floor made from 37 tons of melted weapons, transformed into tiles by 11 women[100] survivors of sexual violence during the Colombian conflict. The project was led by the Colombian sculptor Doris Salcedo, renowned for works that reflect on violence, memory, and collective trauma[101].

Fig. 2: *Fragmentos*, hall, floor, and ruins[102].

Fragmentos is thus the material outcome of the survivors' own labor. They physically engraved, hammered, and shaped the metal tiles that make up the floor, imprinting upon them both the physical and symbolic traces of what they endured. The surface of the tiles is not entirely smooth: "just like the scars left by the physical, psychological, and sexual violence suffered by these women, the metal sheets retain the marks of the blows they received"[103]. The artwork, therefore, embodies the experience of the women, who find in art a safe and authentic channel of expression, free from stereotypical rhetoric and representational constraints[104].

One of the first things that strikes the visitors to *Fragmentos* is that, although it expresses pain, it does not dwell on the brutal details of the events that shaped the lives of Colombian women during the conflict. As noted, the central element is a floor forged by the women themselves, while the surrounding space remains empty, occasionally hosting temporary exhibitions. These features align with Salcedo's broader

[100] Both academic and non-academic sources discussing *Fragmentos* differ in reporting the number of women involved in its creation. In this work, the number of participants is identified as eleven, based on the list of names provided in the official video by the Museo Nacional de Colombia documenting the making of the piece. These eleven women are: Sirley Dominicó, Estebana Roa Montoya, Magaly Belalcazar, Nelcy Ramos, Nidia Cortés, Fulvía Chungana, Ángela Marìa Escobar, Alejandra Vera, Marisol Betancourt Nupàn, Nancy Gómez Ramos, and Marìa Felicitas Valderrama. See MUSEO NACIONAL DE COLOMBIA, *Fragmentos* [Video], YouTube 2020 (retrieved from the YouTube channel of the Museo Nacional de Colombia).

[101] MUSEO NACIONAL DE COLOMBIA, *Fragmentos*, *op. cit.*

[102] Source: Website of Granada Garcés Arquitectos, the studio in charge of the architectural and musicographic intervention of *Fragmentos*.

[103] J. MARTÍNEZ, *Un territorio acechado: realismo espectral en Fragmentos de Doris Salcedo*, in *Revista de Estudios Colombianos*, 55, 2020, p. 44 (my translation).

[104] RED DE MUJERES VÍCTIMAS Y PROFESIONALES, *Fragmentos: nuestra reparación*, in *Revista Arcadia*, n.d. (retrieved from Revista Arcadia website).

artistic approach: though deeply political and critical, her work refrains from depicting violence explicitly. In her view, this restraint enables viewers to focus on loss, on grief, and on what remains—or does not remain—after violence[105]. This is also what emerges in *Fragmentos*. As the artist herself has pointed out, "[t]his work presents only emptiness and absence, because it is precisely through these elements that I can convey the utterly irredeemable nature of war"[106]. In a similar vein, she stressed that it is "an empty, a silent place, because war reduces us to silence and creates a void, a sense of emptiness"[107]. The emptiness and the presence of the floor alone are designed to evoke an emotional response: these are the features that speak directly to the visitor and create an empathetic connection with the women who made the work.

Fig. 3: *Fragmentos*, floor and void[108].

At the same time, the empty space and the floor are also meant to elicit a cognitive response in the viewer, encouraging both personal and collective reflections on the Colombian conflict and on the ways in which women experienced it. As some visitors have observed, "[t]his place is a place of peace, of reconciliation, but it is also a place that reminds us of our history, of the events that shape and form us as Colombians"[109]. Importantly, these reflections do not occur through the imposition of a fixed interpretation of events, as the monument-like nature of *Fragmentos* might initially suggest. On the contrary, they arise from the viewers' personal encounter with the environment. Indeed, *Fragmentos* is not a monument, but a counter-

[105] M. SAONA, *Touching pain: The matrixial experience of trauma in works by Doris Salcedo*, in J. BOESTEN, H. SCANLON (Eds.), *Gender, Transitional Justice and Memorial Arts*, Routledge, Oxon, New York, 2021, pp. 194-195.
[106] M. B. SÁEZ DE IBARRA, *Fragmentos: un lugar común*, in *Revista Arcadia*, n.d. (retrieved from Revista Arcadia website).
[107] MUSEO NACIONAL DE COLOMBIA, *Fragmentos*, *cit.*
[108] Source: Website of Granada Garcés Arquitectos, the studio in charge of the architectural and musicographic intervention of *Fragmentos*.
[109] S. VARGAS MARTÍNEZ, *Analítica para la musealización del conflicto armado en Colombia*, in *Actas. Red Latinoamericana de Metodología de las Ciencias Sociales*, 2023, p. 5 (my translation).

monument, as Salcedo herself has emphasized[110]. It is not a "vertical, phallic space tied to the visual tradition of war", meant to convey a triumphant narrative. Rather, it is a "horizontal and open space", intended to allow diverse lived realities to surface and to foster situated memories and thoughts[111].

For the artist, these aspects are essential. The main objective of *Fragmentos* is, in fact, to "make the present sensitive to a plurality of pasts that resist disappearance, including those that do not let themselves be told, represented, or collected in official narratives. The floor tiles and the open space demarcated by *Fragmentos* are there to enable other modes of resonance for sounds that might otherwise remain unheard"[112]. In this sense, *Fragmentos* functions as a "medium"—it is a place "to be haunted by the presence of the absent and by silenced whispers that continue to struggle to be heard"[113]. It is precisely in the encounter with something not physically present but deeply felt that a dialogue may unfold—even a dissonant one—opening the way for a multiplicity of thoughts and, consequently, of memories[114].

Within this dynamic, the possibility arises for a dual recognition of the women who took part in the creation of *Fragmentos*—and, by extension, for all those who, like them, endured violence and abuse during the conflict. First, the emotional response elicited by the work entails an acknowledgment of the pain these women suffered, thereby affirming the dignity of their experience as victims. Second, the viewer's engagement with the outcome of their labor invites recognition of something beyond suffering. The fact that the women themselves forged the floor represents an active response to trauma: *Fragmentos* is not only a site of testimony, but a deliberate act of reclaiming agency and initiating renewal. In this way, the women appear not merely as passive victims, but as active subjects capable of reshaping their lives and contributing to the construction of a peaceful democratic order.

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[110] On the topic, P. VIOLI, *Story of a counter monument: Doris Salcedo's Fragmentos in Bogotá*, in *Punctum: International Journal of Semiotics*, 5, 2, 2019, pp. 64 ff. The term "counter-monument" emerged in Germany in the context of postwar reflection on the Holocaust. Given the challenges of commemorating historical events marked by collective guilt, German artists developed a form of remembrance that deliberately rejected the celebratory and authoritative rhetoric of traditional monuments. Instead, they embraced principles of instability, impermanence, active public engagement, and critical reflection on memory. See J. E. YOUNG, *The Counter-Monument: Memory against Itself in Germany Today*, in *Critical Inquiry*, 18, 2, 1992.

[111] M. ALLENDE CONTADOR, *Monumentos actuales para territorios con conflictos imperecederos, permanentes, constitutivos, instituyentes, legendarios, pero muy, pero muy reales*, Ciclo de conversaciones abiertas sobre el momento social y la ciudad que vivimos. Barco Galería para la Arquitectura, 2020, p. 2 (my translation). See also M. B. SÁEZ DE IBARRA, *Fragmentos: un lugar común*, *cit.*

[112] M. D. R. ACOSTA LÓPEZ, *Rendering the unheard-of believable*, *cit.*, p. 407.

[113] J. MARTÍNEZ, *Un territorio acechado*, *cit.*, p. 46 (my translation).

[114] From this perspective, *Fragmentos* can be described as a "performative monument". Unlike traditional monuments, these monuments do not simply "represent" memory—they stage it, creating spaces open to confrontation, reinterpretation, and critique. Here, performance becomes a means of challenging dominant narratives and giving voice to marginalized or traumatic memories. See M. WIDRICH, *Performative monuments: The rematerialisation of public art*, Manchester University Press, Manchester, 2014.

This understanding, as may be perceived by the viewer, emerges clearly from the accounts of the artists. For them, being involved in the creation of *Fragmentos* was a way to release their anger and embark on a genuine process of healing, personal reconstruction, and empowerment. In their own words:

"When we had to go to Bogotà to melt down the metal, and we made the "boom boom boom!" noises, which sounded like gunshots, the first thing we felt was anger and we started to hit it hard, really hard, and we worked fast, and went and got other sheets of metal, and hit those hard too".

"Hammer strokes full of anger and fury, for myself and others, hammering out my own story and that of other people, because I've listened to the stories of other women who were victims of this, and you go on hammering".

"I start to get the poison out of my system, you could say. I find an outlet for my anger, and I have all those thoughts about what happened. Then you go on hammering and beating, get rid of that poison and start to feel a little bit of relief".

"I gave it everything, with each stroke of the hammer. I beat down on those memories, molded my memories onto this sheet of metal, and then I felt really proud that I'd done it because here I was, pounding everything that happened to me into this object"[115].

"Hearing the sound of the hammers striking the metal molds and feeling the fatigue in our hands from repeatedly performing this action were exercises that represented a process of catharsis and liberation for us, during which we also experienced mixed feelings such as anger and pain. However, while reliving our painful experiences, we were also touched by feelings of hope and dignity because we were aware of the place where we stood"[116].

Fig. 4: *Fragmentos*, metal tiles[117].

As these testimonies suggest, the creative process allowed the women to face their painful experiences without being overwhelmed. Hammering became a way to channel their pain, summon inner strength,

[115] MUSEO NACIONAL DE COLOMBIA, *Fragmentos*, *cit.*
[116] RED DE MUJERES VÍCTIMAS Y PROFESIONALES, *Fragmentos*, *cit.*
[117] Source: Archivio Código.

and begin to process what they had lived through[118]. At the same time, the act sparked both personal and symbolic renewal. Transforming weapons—once instruments of violence—into something lasting and meaningful triggered a renewed sense of self and belief in their capacity to act. As Salcedo observed, "[t]he women's reaction was extraordinary because of their awareness that the gun's meaning was being transformed by their agency of hammering and reshaping the metal. They were quite moved to realise that they were making art and history"[119].

Within this framework, the potential for social transformation also emerges. *Fragmentos* centers on women—those who disproportionately bore the weight of the conflict due to intersecting forms of oppression and specific historical and socio-economic conditions. This focus carries emancipatory significance in itself: by speaking out and asserting their own histories, the women challenge the patriarchal power structures of Colombian society. On a collective level, however, it is public engagement that can foster relational and social practices capable of rejecting discrimination and oppression, opening up possibilities for more egalitarian and non-violent dynamics. The fact that *Fragmentos* stimulates dialogue and reflection encourages this process. Moreover, it symbolically enacts it: the material and its transformation stand for history, and for the fact that we, as individuals, have both the right and the power to change it.

Fragmentos has not been immune to criticism[120], including from a gender perspective. Of particular relevance to discussions on gender-sensitive reparative practices is the observation that Fragmentos may not be a truly collaborative work: the women survivors of violence were not involved in the conceptual design, but only in the physical execution of the piece[121]. Further criticism has been directed at the video installation in one of the three rooms of *Fragmentos*, which explains the origins of the work. Although the women who participated in the project appear in the video, very little is shared about them: their names are only shown at the end, and for most of the video, their identities are confined to the role of victims, thus reproducing the conventional image of the suffering woman in need of protection[122]. Finally, Salcedo

[118] This process was further enabled by the mutual support the women offered one another. As one participant in the project testified: "[w]hat I'm beginning to realize is that there are lots of other women in the same condition. That's when I start to talk about it, then I feel free and start to escape from this glass case and understand, firstly, that I am not alone, and secondly, that I have rights and my dignity, which is even more important". MUSEO NACIONAL DE COLOMBIA, *Fragmentos*, *op. cit.*

[119] A. SHAW, *Doris Salcedo's army of women reshape the meaning of guerrilla weapons*, in *The Art Newspaper*, 2018, December 1 (retrieved from The Art Newspaper website).

[120] M. D. R. ACOSTA LÓPEZ, *Rendering the unheard-of believable*, *cit.*, pp. 406 ff.; C. ELSTON, *Nunca Invisibles: Insurgent Memory and Self-representation by Female Excombatants in Colombia*, in *Wasafiri*, 35, 4, 2020, p. 70; V. GUTIÉRREZ TURBAY, *Fragmentos de Doris Salcedo: Contra-monumentos, afectos, justicia y enfoque de género*, Programa de Magíster en Estudios Latinoamericanos, Universidad de Chile, 2019, pp. 9 ff.; S. VARGAS MARTÍNEZ, *Analítica para la musealización del conflicto armado en Colombia*, *cit.*, pp. 11 ff.

[121] V. GUTIÉRREZ TURBAY, *Fragmentos de Doris Salcedo*, *op. cit.*, p. 11.

[122] *Ibid.*, pp. 9-10.

is said to aestheticize women's suffering in order to provoke compassion in the viewer. However, in doing so, she may risk obscuring the structural dimension of violence and failing to foster collective, critical, and political engagement necessary to challenge the *status quo*[123].

These critiques are understandable and undoubtedly have some merit. However, it seems difficult to deny the potential of *Fragmentos*—at the very least—in offering participants a profound sense of recognition and personal empowerment. As suggested by research on the topic, when victims take part in the creation of a memorial—or of any symbolic gesture or object intended to acknowledge their suffering—the resulting work is more likely to hold real value for them, including in terms of psychological reparation[124]. Moreover, the social response to a memorial also matters[125]: the fact that *Fragmentos* received significant public visibility and engagement likely contributed to the women feeling seen and heard. As one woman involved in the project stated, "[b]eing able to work with Doris was a kind of recognition for us, for the victims. It was part of the process of making amends, of the reparations that we were never able to obtain"[126]. On this basis, despite its possible limitations, *Fragmentos* appears to represent a compelling example of how artistic practices can serve as a vehicle for promoting meaningful, gender-sensitive forms of reparation in post-conflict contexts.

6. Conclusion.

This study has examined the evolving landscape of reparation within transitional justice, with a particular focus on the gendered nature of harm and the potential of artistic expression to contribute to reparative efforts for women. Grounded in international law, the concept of reparation has undergone significant expansion—moving beyond a strictly legal and corrective model aimed at restoring the *status quo ante*, toward a more multidimensional, victim-centered, and transformative approach. This shift has been especially important in addressing the specific experiences and needs of women, whose suffering in conflict settings is shaped by intersecting forms of violence and structural inequality. These realities call for holistic strategies of reparation, which prioritize *recognition*, *transformation*, and *participation*.

Despite progress in international legal standards and policy commitments toward acknowledging women's roles and their positions in conflict, the practical implementation of gender-sensitive reparation remains uneven. Violence against women is still predominantly framed in terms of sexual or physical abuse, while women are mainly excluded from decision-making processes. Furthermore, symbolic forms of reparation frequently depoliticize women's experiences, reducing them to narratives of passive

[123] *Ibid.*, p. 16.
[124] B. HAMBER, *Narrowing the micro and the macro*, *cit.*, p. 571.
[125] B. HAMBER, *Narrowing the micro and the macro*, *op. cit.*, p. 571.
[126] MUSEO NACIONAL DE COLOMBIA, *Fragmentos*, *cit.*

victimhood and thereby risking the reinforcement of gender-oppressive social structures. Crucially, reparation initiatives often fall short of fostering meaningful transformation, as they fail to address the root causes of gender inequality or to empower women to actively shape their futures.

Against this backdrop, this study has highlighted the potential of art to advance symbolic reparation practices that are genuinely gender-sensitive. As a bottom-up practice, art enables women to express their experiences of pain on their own terms, fosters moments of listening and acknowledgment, and affirms their resilience and humanity. In doing so, it creates space for both *participation* and *recognition*—and, ultimately, for identity reconstruction, healing, and empowerment. Moreover, as a medium of critical and political expression, art becomes a tool for *transformation*, capable of challenging gendered power structures and entrenched social inequalities.

These dimensions have been illustrated through the case of *Fragmentos*, a counter-monument built in Bogotá by women survivors of sexual violence during the Colombian armed conflict. Far from merely commemorating suffering, *Fragmentos* reworks it through an embodied and collective process that restores both visibility and agency to the women involved. It becomes a space for dialogue and reflection, challenges the silences of official narratives, and proposes alternative imaginaries that contribute to the goals of gender-sensitive reparation. As this experience demonstrates, when women participate in shaping their own reparation, memory becomes action and opens up to the concrete possibility of more equitable futures—anchored in dignity and the dismantling of structural inequalities.

Despite its limitations, the experience of *Fragmentos* illustrates not only the potential of art to meaningfully contribute to gender-sensitive reparation, but also the urgency of moving beyond liberal, top-down transitional justice frameworks. As widely noted in critical scholarship, conventional transitional justice paradigms often fail to engage with the lived realities of affected communities and overlook the structural injustices that shape their experiences. In response, an expanding body of literature calls for more grounded, participatory approaches—ones that focus on local voices, acknowledge cultural specificities, and treat survivors not as passive recipients but as agents of change[127]. In this context, artistic practices such as *Fragmentos* offer a compelling pathway. By enabling women to actively participate in shaping the narratives, forms, and meanings of their own reparation, such initiatives promote a more inclusive and transformative model of transitional justice that enables long-term social change and positive peace.

[127] See *supra* note 69.

The case for health reparations in contemporary asymmetric warfare. (Bio)ethical considerations on Gaza's women condition *

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Abstract [En]: The theoretical framework encompassing reparations in both legal and ethical terms have been evolving in the last decades. Not confined anymore to monetary compensation, reparations can be articulated with diverse approaches. This paper aims to sustain the role of health reparations as an intersectional means to support equity not just in the aftermath of an armed conflict, but even over their course. Moreover, asymmetric war scenarios are addressed as new scopes of analysis of bioethics. Finally, Gaza's women condition is considered as a textbook example of such an approach.

Titolo: Le riparazioni sanitarie negli scenari di guerra asimmentrica. Riflessioni (bio)etiche sulla condizione femminile a Gaza.
Abstract [It]: Il quadro teorico che concerne le riparazioni, sia in termini giuridici sia etici, si è evoluto negli ultimi decenni. Non più confinate alla sola dimensione compensativa in termini monetari, le riparazioni risultano oggi articolabili articolate secondo diversi approcci. Il presente paper si propone di riflettere sul ruolo delle riparazioni in ambito sanitario come strumento intersezionale, in un'ottica di etica della cura e attenta alle vulnerabilità c.d. stratificate, per promuovere l'equità, non solo nel periodo successivo a un conflitto armato, ma anche nel corso dello stesso. Inoltre, gli scenari di guerra asimmetrica vengono qui considerati come nuovi ambiti di analisi per la bioetica stessa. Infine, viene presa in esame la condizione femminile a Gaza come esempio paradigmatico di tale approccio.

Keywords: Health reparations; bioethics; Gaza's women; care ethics; ethics of vulnerability.
Parole chiave: Riparazioni sanitarie; bioetica; donne di Gaza; etica della cura; vulnerabilità-

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1. Introduction

The development and implementation of reparations for violations of international human rights law in post-conflict contexts have significantly evolved since the concept first took shape in the restorative work of South Africa's post-apartheid *Truth and Reconciliation Commission*. Various forms of remedial initiatives have since emerged, ranging from monetary compensations to public policies aiming at promoting social inclusion of marginalized groups and communities. The notion has increasingly taken hold that, given the shared objective of redressing wrongs and injuries inflicted, reparations must accomplish two criteria:

* Peer reviewed.

(1) seeking to amend for past injustices of peculiar populations; (2) remedying actual and present inequitable outcomes[1]. Historically conceived as claims made by one state against another following the conclusion of an armed conflict, reparations have more recently become the object of demands advanced by non-state actors. By way of illustration, the Aboriginal peoples of Australia, the Māori of New Zealand, and various Native American nations in North America have advanced claims for the restitution of their traditional lands from European settlers as reparative measures. Comparable claims have been raised by Eastern Europeans deprived of property under socialist regimes. In the United States, African Americans—descendants of enslaved persons—have demanded reparations from the federal government for the injustices and lasting consequences of slavery. The latter demand forms the subject of the present analysis[2].

In this context, some pioneering studies have been lead focusing on the nature, role, and results of a peculiar form of reparations, that is health reparations. Notably referred to inequalities stemmed after the pandemics of COVID-19 in the United States against racially marginalized communities[3], health reparations can be considered a beneficial restorative means even in armed conflict settings. More specifically, health reparations may prove their worth – on a theoretical level for the time being – in the contemporary most typical war scenario, namely the one of 'asymmetric warfare'. The latter consists in conflict where combatants are remarkably disparate, being set against each other a regular army and not 'proper' combatants. Generally, in such a framework, the regular army employs strategies, weapons, and tactics that might be legally unacceptable in a 'proper war'[4]. Several armed conflicts of the last century had and asymmetric nature: Vietnam, Afghanistan, Kosovo, Syria, and Palestine. Moreover, symmetric wars are characterized for being protracted, not defined as a temporal event and, therefore, they entail an exponentially greater amount of health risks, damages, and injuries not just for combatants, but even for civil population.

Consequently, this paper aims to provide a preliminary reflection upon the following elements: (a) to suggest that, given an asymmetric warfare context, not time-limited, some forms of reparations may emerge still during the armed conflict; (b) to propose the role of bioethics as a conceptual space to reflect on public health dilemmas and moral challenges in war time, by broadening the scope of the discipline; (c) in so doing, to uphold a gender approach. In this path, some limitations to the present paper should

[1] D.R. SOLED, A. CHATTERJEE, D. OLVECZKY, E.G. LINDO, *The Case for Health Reparations*, in *Front. Public Health*, 9, 2021, pp. 1-6.
[2] See *Black Reparations* in *Stanford Encyclopedia of Philosophy*, as edited in 2022 by B. BOXILL.
[3] D.R. SOLED, A. CHATTERJEE, D. OLVECZKY, E.G. LINDO, *The Case for Health Reparations*, in *Front. Public Health*, 9, 2021, pp. 1-6.
[4] A. MACK, *Why big nations lose small wars. World politics: The politics of asymmetric conflict*, in *World Politics*, 27 (2), 1975, pp. 175-200-

be highlighted, such as the consideration of this gender approach in its most traditional – and limited – understanding, that is the traditional binary gender role approach grounded on sexual differentiation between women and men. Finally, this paper will highlight Palestine, specifically Gaza strip scenario, as a textbook example of a feminist question integrating the above-mentioned elements.

2. The case for Health Reparations as intersectional contrast to discrimination.

Let us therefore being by considering the first reasoning line, that is the nature and role of health reparations. The initial dominant understanding of reparations was that exclusively States, as subjects of international law, could be found liable of redress to victims of wrongful acts committed by them in violation of international obligations to which they were bound. However, new legal doctrines in scholarship and in practice have been upholding and developing such a standard. As afore mentioned, the disproportionate impact of the pandemics in 2020-2021 on racially marginalized communities in the United States led some Authors to question how justice in healthcare should be achieved[5]. Focusing on racially marginalized communities entails to consider how past medical and scientifical approaches effectively grounded racial and ethnical bias, starting with the fact that science and medicine have invoked the concept of biological race to legitimize the racist myth that purportedly distinct "Black" genes exist and that these genes render Black individuals inherently inferior to White individuals[6]. In other words, race as a socio-political construct has been displayed as a genetic founded element, while no scientific findings had never emerged to support a biological bearing or determinacy of race[7]. In the last years, many scholars, scientists, and physicians have supported the case for the removal of a – supposed – biological concept of race in research and practice[8], but the effects – on research, clinical practice, and theoretical reflection – of such an approach are extremely complex to eradicate. That is, although the

[5] EM HAMMONDS, SM REVERBY, *Taking a medical history: COVID, "mistrust", and racism. The Mudsill,* 2021. Available online at: https://themudsill.substack.com/p/the-mudsill-vol-1-no-7 (accessed September 28, 2025); as seen in D.R. SOLED, A. CHATTERJEE, D. OLVECZKY, E.G. LINDO, *The Case for Health Reparations*. On the ongoing legacy of structurally racist health policies and practices in the US, see also S. WHITTAKER, M.-F. HYACINTHE, D. KEENE, A. DULIN, T. KERSHAW, J. WARREN, *Race, wealth and health: The role of reparations*, in *Social Science & Medicine*, 373, 2025, pp. 1-11; M.T. BASSETT, S. GALEA, *Reparations as a public health priority – a strategy for ending black-white health disparities*, in *New England Journal of Medicine*, 383 (22), 2020, pp. 2101-2103; W. JR. DARITY, A.K. MULLEN, M. SLAUGHTER, *The cumulative costs of racism and the bill for Black reparations*, in *Journal of Economics Perspectives*, 36(2), 2022, pp. 999-122.

[5] *Ibid.*, p. 109

[6] M. CHOWKWANYUN, *Race is not biology*, in *The Atlantic*, 2013. Available online at: https://www.theatlantic.com/health/archive/2013/05/race-is-not-biology/276174/ (accessed Dec 8, 2025).

[7] R. BENJAMIN, *Race after technology: abolitionist tools for the new jim code*, in *Soc Forces*, 98, 2020, pp. 1–3.T. T. DUSTER, *Race and reification in science*, in *Science*, 307, 2005, pp. 1050-1051. D. ROBERTS, *Fatal Invention: How Science, Politics, and Big Business Re-Create Race in the Twenty-First Century*. The New Press, NY, 2012.

[8] M. YUDELL, D. ROBERTS, R. DESALLE, S. TISHKOFF, *Taking race out of human genetic.,* in *Science*, 351, 2016, pp. 564–565.

definition of race has remained inconsistent for over a century, it continues to be employed as a taxonomic classification that is both conceptually flawed and socially harmful[9].

In this context, "the continued misuse of biological race in medicine reinforces a racial hierarchy and has resulted in disparities in equal access, treatment, and outcomes. Indeed, there is compelling evidence that racism (rather than genes and biology) is a main driver of health inequities"[10]. Still nowadays, mythical understanding or race, causing marginalization and unequal access to socio-clinical services, persist in medical education and curricula, seriously impacting future decision-making skills and settings of clinicians and researchers[11]. Nevertheless, supporting a supposed scientific validation of biological race determined the consolidation of a racial hierarchy with economic, social, political, cultural consequences. Given this scenario, health reparations, which may differentiate for nature and form, maintain the final aim of rectifying past injustices of specific populations and remedying current inequitable outcomes. Reparative policies can be conceptualized as those that accomplish two primary objectives: (i) they dismantle existing structures that perpetuate racial hierarchies by empowering the individuals subjected to oppression; (ii) they aim to achieve equity in outcomes rather than mere equality. While both equity and equality seek to promote justice, equality does so by providing identical treatment to all individuals irrespective of their specific needs, whereas equity entails differential treatment tailored to those needs. Accordingly, a health inequity may be defined as a disparity in health outcomes between population groups that arises from avoidable systemic structures rooted in racial, social, environmental, or economic injustices[12].

Health reparations should therefore be tailored on the consequences of the wrongs suffered by a specific discriminated group or local community to restructure the way in which choices in healthcare are made. Namely, primary decisions-makers should precisely be local communities to be conscious of the discriminatory element rather than blind to it. In the US health reparations' studies, this element is declined as race-conscious rather than race-blind[13], but the same approach can be assumed in having

[9] E.M. HAMMONDS, R.M. HERZIG (eds), *The Nature of Difference: Sciences of Race in the United States from Jefferson to Genomics*, The MIT Press, Cambridge, MA, 2009. L. BRAUN, E. HAMMONDS, *The dilemma of classification: the past in the present*, in K. WAILOO, A. NELSON, C. LEE (eds.), *Genetics and the Unsettled Past: The Collision of DNA, Race, and History*, Rutgers University Press, New Brunswick, NJ, 2012, pp. 67–80.

[10] D.R. SOLED, A. CHATTERJEE, D. OLVECZKY, E.G. LINDO, *The Case for Health Reparations*, p. 2.

[11] K.M. HOFFMAN, S. TRAWALTER, J.R. AXT, M.N. OLIVER, *Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites*, in *Proc Natl Acad Sci USA*,11, pp. 4296–4301. C. AMUTAH, K. GREENIDGE, A. MANTE, M. MUNYIKWA, S.L. SURYA, E. HIGGINBOTHAM, et al., *Misrepresenting race—the role of medical schools in propagating physician bias*, in *N Engl J Med*, 384, 2021, pp. 872–878. N. KRIEGER, R.W. BOYD, F. DE MAIO, *Maybank, Medicine's privileged gatekeepers: producing harmful ignorance about racism and health*, in *Health Affairs Blog*, 2021, 10.1377, https://www.healthaffairs.org/content/forefront/medicine-s-privileged-gatekeepers-producing-harmful-ignorance-racism-and-health (accessed on 7 Dec, 2025).

[12] D.R. SOLED, A. CHATTERJEE, D. OLVECZKY, E.G. LINDO, *The Case for Health Reparations*, p. 3.

[13] D.R. SOLED, A. CHATTERJEE, D. OLVECZKY, E.G. LINDO, *The Case for Health Reparations*, p. 4.

health reparations which must be gender-conscious rather than gender-blind. In other words, health reparations must wholeheartedly seek to promote and benefit those communities which are constrained and oppressed for their gender identity, role, or manifestation.

But health reparations are not limited to healthcare. Indeed, health outcomes are severely affected by non-medical factors as income, education, food security, hygiene, housing, discrimination, structural conflict, early childhood development, unemployment, access to healthcare etc. These elements can be synthetized as social determinants of health (SDOH), having major effects on population and public health[14]. It is evident that the relationship between SDOH and health outcomes are grossly at stake if we take into consideration an armed conflict scenario, in which civilian bodies are harmed directly and indirectly, by weakening SDOH through mass displacement, food and water supply systems' disruption, as well as medicine embargoes[15]. In addition to this, a significant body of literature has analyzed the relationship occurring between wealth and health, proving how mortality, mental health, and chronic conditions are effectively linked to socioeconomic conditions, that is greater wealth is associated with better quality of health[16]. On the one hand, these findings entail the opportunity to foreground traditional forms of reparations, that is financial compensation, but on the other claim for considering the social context in an intersectional way, without overlooking the gender perspective. Indeed, present days inequities often demonstrate the cumulative impact of a multitude of discriminations, embedded both in policies and practice, which stems from institutionalized bias negatively impacting equal access to resources. That is, succinctly, the well-known and established criticism grounded on the concept of *intersectionality* rooted in the work of the African American feminist scholar and lawyer Kimberlé Crenshaw, as well as in the efforts of black feminist movements and collectives in the United Kingdom and United States' context[17].

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[14] See official website of the World Health Organization on the SDOH, impacting for 30-55% of health outcomes worldwide.

[15] B.S. LEVY, *A public health perspective on war*, in B.S. LEVY (ed.), *From horror to hope*, Oxford University Press, New York, pp. 3-15; B.S. LEVY, *Vulnerable populations,* in B.S. LEVY (ed.), *From horror to hope*, Oxford University Press, New York, pp. 180-196.

[16] S. WHITTAKER, M.-F. HYACINTHE, D. KEENE, A. DULIN, T. KERSHAW, J. WARREN, *Race, wealth and health: The role of reparations*, in *Social Science & Medicine*, 373, 2025, p. 2.

[17] Mainstream white feminism has, in fact, been rigorously critiqued for rendering the lived experiences of Black women invisible and for marginalizing them within the broader feminist discourse (Hill Collins, 1998, 1999; Combahee River Collective, 1977). In the early 1990s, Hill Collins introduced a comprehensive interpretative framework that synthesized the ideas and writings of Black feminist scholars and activists, both within and beyond the academy. This seminal work provided the first coherent and systematic overview of Black feminist thought, marking a transformative moment in feminist theory. See K. CRENSHAW, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,* in *University of Chicago Legal Forum*, 8, 1989, pp. 139-167. P. HILL COLLINS, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*, Hyman, US, 1990 (1st ed.). P. HILL COLLINS, *Fighting words: Black women and the search for justice*, University of Minnesota Press, Minneapolis, 1998. Combahee River Collective, *A black feminist statement*, 1977, https://www.loc.gov/item/lcwaN0028151, last accessed on 8 Dec 2025, pp. 269-277.

Therefore, considering newer forms of reparations requires to call into consideration both intersectionality and, at an earlier stage, another element, which will be explored in depth in the subsequent section of the present paper. That is, reflecting with an intersectional approach and, therefore, assuming not just the *vulnerable* nature of human beings, but, more specifically, the idea that vulnerability may be comprised of many and different layers. In other words, people experience their ontological and individual vulnerability buy experiencing discriminations on different strata (social, economical, cultural, political,etc.). Racial discrimination, also in its colonial articulation, results in a vulnerable condition, which meaning may vary from a legal understanding (by identifying and labelling specific groups or communities) to a philosophical one (by questioning in more depth the nature and effects of different layers of vulnerability co-existing, evolving, and changing over the time in each individual). The layered structure of vulnerability, as proposed by Zullo, highlights the temporality and discontinuity that may characterize everyone's experience of a vulnerable condition, insofar as contexts change and states of vulnerability may recede or re-emerge at different moments and in different situations. Vulnerability is thus both structural—ontological and universal, corresponding to Butler's notion of *precariousness*—and contingent[18]. As aforementioned, these concepts will be examined further in the subsequent section, but they are intrinsically crucial to shed light on the relevance of investigating health, and health reparation, with an holistic vision of individual embedded in a complex reality. Consequently, even if financial compensation as a tradition form of reparation may prove its effectiveness – especially in those contexts where wealth inequities show the cumulative burden of a multitude of discrimination – by granting significant health improvements, concurrently "implementing scale of monetary reparations necessary to close the racial health gap would itself require significant societal and policy change. […] a one-time payment of reparations can achieve some level of parity; however, the degree to which that will extend to future generations or endure over time remains unknown. Like Himmelstein, we argue that reparations payment alone cannot lead to health justice because material resources do not address the racist structural forces and outcomes such as segregation that drive health inequity. Understanding this means we must collectively reimagine wht a program of reparations looks like"[19].

This is particularly significant if we consider not exclusively a 'proper war' scenario, but an 'asymmetric warfare' context, in which civilians are involved almost as the combatants in the conflict arena and, consequently, in its effects. Furthermore, asymmetric wars are typically bloodier than those of regular armies facing each other, given that combatants not belonging to a state's army are not considered, legally

[18] S. ZULLO, *Potenzialità e limiti della nozione di vulnerabilità*, in O. GIOLO, B. PASTORE, *Vulnerabilità. Analisi multidisciplinare di un concetto*, Carocci, 2018, p. 196.
[19] S. WHITTAKER, M.-F. HYACINTHE, D. KEENE, A. DULIN, T. KERSHAW, J. WARREN, *Race, wealth and health: The role of reparations*, 2025, p. 9.

speaking, 'proper' fighters. This falls short if we omit to consider not just the force's disparities in asymmetric wars, but even their nature of not being defined in time: wars as temporal event, clearly featured by a start and a finish, belong to the past. Instead, "they have become chapters in prolonged and protracted conflicts that ebb, and flow yet trap the hostage populations for decades, consuming the lives of generations and shaping their health needs and the provision of health care"[20].

Under these circumstances, health needs extend beyond those essential during an armed conflict and linked to physical harms to people involved in the fighting. Indeed, health need entail those afore mentioned SDOH, as well as hardship in accessing common healthcare, and the management of what can be identified as "chronic emergencies"[21]. Nonetheless, SDOH should be also taken into consideration with an intersectional approach and, as we will explore further, with a specific reference to the concept of vulnerability in a philosophical rather than in a classical legal manner. Through this process, it should not be overlooked as between 2021 and 2023 we have globally witnessed the highest number of deaths since the year of the Rwandan genocide[22]. Namely, reflecting upon warfare, and especially the asymmetric one, in relation to reparative measures and to the holistic health of people involved, in their specific vulnerable conditions, is of urgent concern. As a matter of fact, chronic emergencies "in places like Gaza strip or Yemen are no longer a contradiction in terms but a fair description of recurring wars that force health professionals to continuously divert limited resources from long-term capacity building to meeting immediate needs created by the latest military onslaught – to the long-term detriment of any health system infrastructure"[23].

Therefore, it is not groundless to say that reparations, and specifically health reparations, may occur not exclusively at the end (whenever will be) of the armed conflict, but even during this kind of permanent status of chaos, of recurring "chronic emergencies". In addition to this, we should recall what already highlighted about equity and health reparations, that is the aim to amend disparities rooted in racial, social, and gender injustices, precisely making local communities – civilians in warfare – the primary decision-makers in their reconstruction context. Namely, health reparations must be tailored on the specific effects of the wrongs suffered by the local community.

This can be particularly true if we consider 'asymmetric war' in its 'chronic emergencies' nature as what some Authors have defined as 'endemic disease'. At present, war and armed conflicts are effectively identifying characteristics of the Global South, spreading like an endemic disease, by provoking population displacement, infection outbreaks, food and water shortage, and mental illness. "Ceaseless

[20] T. ARAWI, S. G. ABU-SITTAH, *Bioethics in conflict zones*, *in AMA Journal of Ethics*, 24(6), 2022, p. 455.
[21] *Idem.*
[22] J. W. MÄRZ, D. MESSELKEN, N. BILLER-ANDORNO, *Bioethics challenges in times of war. Editorial*, in *Bioethics*, 39, 2025, pp. 3-4.
[23] T. ARAWI, S. G. ABU-SITTAH, *Bioethics in conflict zones*, p. 455.

conflicts in disaster areas give birth to other conflicts. When war becomes accepted and is incorporated into the lives of people living in conflict regions, conflict is indeed endemic and omnipresent. Yet characterizing conflict in this way can also be acknowledged as a product of colonialism, since endemic disease is a concept derived from colonial tropical medicine that is rooted in colonizers' perceived need to make a region safe for occupation"[24].

This element, the extensive colonialist heritage embedded in Western societies and – metaphorically speaking – corrosively leaking from its fragile pot, is crucial to deepen our reflection on health reparations grounded on SDOH and led in a gender perspective. And this is particularly relevant when considered with an intersectional approach by highlighting the meaning of vulnerability. Therefore, let us keep in mind the metaphorical threads outlined thus far with the aim of questioning if and how asymmetric war, as 'endemic disease', can be comprised in a traditional field of research such as Bioethics to sustain the case of health reparations gender oriented.

3. Public Health in asymmetric warfare: Broadening bioethics' scopes (and subjectivities).

We shall therefore continue by resuming one more element, that is questioning if and how Bioethics, as a field of research and training, may have a role in supporting the idea of health reparations during asymmetric and 'endemic' warfare.

Nowadays, Bioethics is mainly understood as a form of applied ethics, which roughly aligns with medical ethics. This traditional view has been consolidating since the 70s, through the assertion of principlism, that is the application of determined standard principles assumed as universal. The flaws of such an approach have been highlighted and discussed in the last decades, and, succinctly, we can identify such traditional approach as 'mainstream Bioethics' – a successful formulation by Caterina Botti[25]. In the context of 'mainstream Bioethics', it is assumed that general principles of bioethics (e.g. respect for one's autonomy, non-maleficence, beneficence, and justice[26]) may by indifferently applied to everyone, without considering existing gender, social, ethnical, sexual – and many others – differences positively characterizing a single human being. In the field of gender studies linked to Bioethics, criticism to this approach has been advanced implementing the aforementioned notion of intersectionality – rooted in the work of the African American feminist scholar and lawyer Kimberlé Crenshaw[27]. More recently, the

[24] T. ARAWI, S. G. ABU-SITTAH, *Everyone is Harmed When Clinicians Aren't Prepared, in AMA Journal of Ethics*, 24(6), 2022, pp. 490. See also T. ARAWI, S. G. ABU-SITTAH, *War as an endemic disease: towards a new paradigm shift*, in I. LAHER (ed.), *Handbook of Healthcare in the Arab World*, Springer, 2020, pp. 1-16.

[25] C. BOTTI, *Vulnerabilità, relazioni e cura. Ripensare la bioetica*, in *Etica e politica*, XVIII, 2016, 3, pp. 33-57.

[26] As established from 1979 after the Belmont Report and the well-known philosophical work of Beuachamp and Childress. T.L. BEAUCHAMP, J.F. CHILDRESS, *Principles of Biomedical ethics*, Oxford University Press, 6th ed. 2009.

[27] As a matter of fact, the white mainstream feminism underwent harsh criticism for making black women invisible in their life experience, delegitimized from the general perspective of feminism. K. CRENSHAW, *Mapping the Margins:*

case for a queer perspective in Bioethics and the imperative of addressing LGBTQIA+ interests have been sustained[28]. Undoubtedly, Bioethics is proving itself reluctant to significant transitions in relation to both the spectrum of potential subjectivities involved in its field and the range of feasible scopes. This persists despite repeated attempts – employed by scholars involved in Care Ethics, the Ethics of Vulnerability, as well as Legal Feminism - to erode the traditional view of Bioethics. Even if relational approaches to Bioethics, stemming from Care Ethics, Ethics of Vulnerability, and Legal Feminism, are nowadays widespread, the traditional understanding of the discipline grounded on principlism continues to be equally acclaimed. Indeed, even in a niche field such as research on Bioethics and Medical Ethics in armed conflict principlism is evoked and supported. This is patently clear in Nancy Jecker and colleagues' paper: *War, Bioethics, and Public Health* (2025), focusing on the necessary and urgent relationship between Bioethics and Public Health, by broadening the scope of the first. The authors suggest, and this view is unequivocally endorsed in the present paper, to increase the breadth of Bioethics; But what is not supported by the present paper is the method to reach such a goal. That is, when Jecker et al. contend that Bioethics should respond to war through the proposal of a new set of – supposed – universal principles (such as Health justice, Accountability, Dignified Lives, Public Health Sustainability, Public Health Maximization)[29].

Nevertheless, we can sustain a specific case for a Bioethics involved in the real-life context of persons[30] and less entrenched in considering non-empirical subjects in non-empirical contexts. In other words, concurrently with the imperative to include in bioethical reflections a wider range of subjectivities and their peculiar characteristics, in an intersectional renewed approach, we can support the case for broadening the scopes of bioethics. Namely, by resuming the original aim of the discipline, considering ordinary lives in their practical terms, regardless of whether these lives are in a peace or armed conflict context. In this process, the Care Ethics and the Ethics of Vulnerability serve as the most valuable resources. Indeed, giving due consideration to human vulnerabilities may be considered as the essence

Intersectionality, Identity Politics, and Violence against Women of Color, in *Stanford Law Review*, Vol. 43, No. 6, 1991, pp.1241-1299; P. HILL COLLINS PATRICIA*, Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment,* Hyman, US, 1990 (1st ed.); P. HILL COLLINS, *Fighting words: Black women and the search for justice*, University of Minnesota Press, Minneapolis, 1998.

28 T. SUDENKAARNE, *Queering Bioethics:A Queer Feminist framework for vulnerability andprinciples,* Painosalama, Turku – Finland, 2021; T. SUDENKAARNE, *Considering Unicorns: Queer Bioethics and Intersectionality,* in *Journal of Society of Queer Studies in Finland*, 1-2, 2018, pp. 35-50*;* T. SUDENKAARNE,*LGBTQI+ Bioethics: The Need and the foundation*, i*n Journal of Ethics, Medicine and Public Health*, 13, 2020, pp. 1-8*;* Y. WILSON, A. WHITE, A. JEFFERSON*, LGBT People and the Work Ahead in Bioethics*, in *American Journal of Bioethics*, 19(2), 2019, pp. 8-19*;* T. MURPHY*, LGBT People and the Work Ahead in Bioethics*, in *Bioethics*, 29(6), 2015, II-V.

29 N.S. JECKER, C. ATUIRE, V. RAVITSKY, K. BEHRENS, M. GHALY, *War, Bioethics, and Public Health*, in *The American Journak of Bioethics*, Vol. 25, No.5, 2025, pp. 106-120.

30 That "everyday life Bioethics" or "pragmatical Bioethics" drafted by G. BERLINGUER, *Bioetica quotidiana*, Giunti, Milano, 2000.

itself of Bioethics, "as they embody the recognition of human dignity, the ethics of life, and the very principles of bioethics"[31]. That is, resuming Martha Fineman's vulnerability's concept which hinges on the human body, on its nature and its limits: "Our corporeal vulnerability is intensified by the prospect that, in the event of illness or injury, one may suffer profound repercussions within professional, economic, or familial spheres. These harms do not stem from the body itself, but from the rupture or erosion of institutional and social networks. Such damages can be as devastating as physical injury, underscoring not only the inherent fragility of human embodiment but also the fundamental dependence of individuals on the scaffolding of social institutions and the relational structures that sustain them"[32]. This ontological vulnerability, emphasized by specific social, historical, economical, and cultural patterns and circumstances, including warfare, is precisely the mechanism through which re-imagining Bioethics and, according to the present paper, to broaden its scope towards Public Health in armed conflict zones. Additional components must be introduced to underpin the concept of a Bioethics aimed at supporting Health Reparations in relation to Public Health and in an intersectional approach. The first, linked to the philosophical concept of vulnerability, proceeds from the notion of vulnerability understood not in a dogmatic-normative meaning, as a permanent and immutable category with taxonomic purposes, but rather as a possibility for moral reflection aimed at encompassing the diverse identity facets of an individual[33]. In other words, within the aforementioned layered perspective, as proposed by Silvia Zullo, it emerges the temporality and discontinuity that may characterize the experience of a vulnerable condition for each individual, since contexts change, and states of vulnerability may subside or re-emerge at different moments and in different situations. Vulnerability is thus both structural—ontological and universal, corresponding to Butler's notion of *precariousness*[34]—and, at the same time, contingent. This contingent form of vulnerability overlays a structural, ontological dimension of the subject, who is no longer the abstract, serial liberal subject, but a concrete, embodied, and relational one. Relational since her contingent features shape her life into a prism of several and different bodily – and spiritual – experiences. Namely, a "porous" subject[35], whose moral responsibility for care and attentiveness toward others emerges within a relational figurative fabric. Moreover, while it is true that mainstream Bioethics tends to diminish human experience by flattening it into presumed universal models, Care Ethics and

[31] Personal translation of P. HÄBERLE, *La dignità umana come fondamento della comunità statale,* in Id., *cultura dei diritti e diritti della cultura nello spazio costituzionale europeo*, Giuffrè, Milano, 2003 as mentioned in A. PATRONI GRIFFI (ed.), *Vulnerabili. Questioni giuridiche, dilemmi bioetici*, Mimesis, Milano, 2025, p. 11.
[32] Personal translation of M. FINEMAN, *Il soggetto vulnerabile e lo stato responsabile*, in G. BERNARDINI, B. CASALINI, O. GIOLO, L. RE (a cura di), *Vulnerabilità, etica, politica, diritto*, If press, 2018, p. 169.
[33] T. CASADEI, *La vulnerabilità in prospettiva critica*, in O. GIOLO, B. PASTORE, *Vulnerabilità. Analisi multidisciplinare di un concetto*, Carocci, 2018, p. 83.
[34] J. BUTLER, *Precarious Life. The Powers of Mourning and Violence*, Verso, London, 2004.
[35] C. BOTTI, *Vulnerabilità, relazioni e cura. Ripensare la bioetica*, in *Etica e politica*, XVIII, 2016, 3, pp. 33-57.

Ethics of Vulnerability reinstate a multidimensional and ethically resonant understanding of human experience, particularly in contexts already fractured or devalued by the traumas of war. In this restoration, the depth and relationality of lived experience are affirmed, highlighting the embodied and contingent nature of human vulnerability. Such an approach challenges the reductionist tendencies of abstract or universalizing frameworks, emphasizing instead the moral and social interdependencies that sustain human life and confer meaning upon it. To recapitulate, relationality in the context of Bioethics stems, as well in general ethical discourses, from the idea that human beings are vulnerable – in different ways – and their vulnerability demands a relational approach to sustain each singular life experience, by caring for each other's. Human nature is constitutively relational, rendering the subject inherently vulnerable due to interdependence. In Adriana Cavarero's words, the subject is portrayed as obliquely oriented toward the other, engaged in a morally attentive and responsible relational tension[36].

In this context, it is of utter most relevance to acknowledge – with the words of Orsetta Giolo – the methodological relation between legal feminism and legal pacifism, which "in their theoretical and practical conjunction, represent bodies of knowledge that meticulously deconstruct systems of oppression, continuously monitor current events, denounce human rights violations, propose laws and agreements, issue appeals, and draw the attention of the international public opinion to any matter related to the protection of human dignity, regardless of where individuals may be located. They cannot be accused of lacking solutions when what they consistently propose is systematically disregarded in pursuit of other aims"[37]. And in this path, legal feminism, with its intersectional attention to different subjectivities, has a leading role in expanding both the set of subjects included in bioethics and the scopes of the discipline. Specifically, if we consider the idea of reorienting and broadening moral boundaries, as proposed by Joan Tronto, to include in the moral questioning all the subjectivities – starting from women – traditionally excluded by the moral and ethical reflection. This entails a reconfiguration of moral boundaries, intended to encompass—and consequently legitimize—ethical reflection on matters traditionally excluded from moral consideration due to their association with the private sphere[38]. That is, re-shaping Bioethics from its traditional methodological structure – pivoting on principlism – to an intersectional and vulnerability-oriented approach.

Returning specifically to Bioethics and warfare – with due consideration to the Care Ethics and Ethics of Vulnerability methodology – we can follow the approach outlined by Nancy Jecker and colleagues, bioethics should expand its purview on war's public health effects, largely neglected while endorsing

[36] A. CAVARERO, *Inclinazioni. Critica alla rettitudine*, Raffaello Cortina, Milano, 2013.

[37] Author's translation of O. GIOLO, *Iusfeminismo y pacifismo jurídico. Teorías críticas del derecho y el repudio incondicional de la guerra*, in *Derechos y Libertades*, 53,2, 2025, p. 82.

[38] J. TRONTO, *Moral Boundaries: A Political Argument for an Ethic of Care*, Routledge, London, 2006.

clinical and research topics[39]. As early as 2023, a special issue of *Bioethics* addressed precisely '*Bioethics Challenges in Times of War*' by discussing clinical ethical challenges and research topics with an insightful analysis. This focus is surely vital – and the present paper will include some references of those contributions, but it proves to be insufficient. Primarily, this approach is incomplete for its omission of the afore mentioned social determinants of health (SDOH), severely undermined by warfare; Subsequently, for the valuable opportunities to reflect upon those elements already taken into consideration by public health researchers but lacking that precious *ethical* questioning which bioethics fosters. As a matter of fact, bioethics already transcended its original moorings in research and clinical ethics[40] and, in the last two decades, many bioethics scholars devoted their attention to both SDOH (income, education, food security, hygiene, housing, discrimination, structural conflict, early childhood development, unemployment, access to healthcare) and large-scale global events (pandemics, climate change, global disparities, migrations).

In 2019, Andrea Mazzarino and colleagues foregrounded tangible living circumstances in warfare for civilians, inviting people not experiencing such frightful hardship to "imagine what it would be like—the bombings, sniper fire, unexploded ordnance, abductions and imprisonment, house raids, torture, rape, and surviving families' flight from all of it. Beyond the bombs and bullets, war brings privation: loss of access to food, water, and electricity; bombed out hospitals, schools, and many other institutions of human welfare and community; and loss of trust and emotional equanimity. These are the kinds of horrors that war inflicts on human beings, both combatants and civilians"[41]. This war setting describes thoroughly the empirical dimension often overlooked by bioethics, which, instead, should be at the basis of its ethical reflection. And this falls short if we forget to resume the concept of asymmetric warfare afore mentioned, that is those elements which only heighten war's public health crisis when the armed conflict is led between a standing army and a non-state actor. Extensively protracted, asymmetric war – and its 'chronic emergencies' nature leading it to become like an 'endemic disease'[42] – entail exponentially wider public health's outcomes, often characterized by transgenerational war-related trauma and the unfeasibility to build infrastructures essential to meet health needs in their complexity[43] (including those required to grant SDOH). In this scenario: "a helpful way to characterize the health burdens of war is

[39] N.S. JECKER, C. ATUIRE, V. RAVITSKY, K. BEHRENS, M. GHALY, *War, Bioethics, and Public Health*, in *The American Journak of Bioethics*, Vol. 25, No.5, 2025, pp. 106-120.
[40] V. RAVITSKY, *A path forward-and outward: Repositioning bioethics to face future challenges*, in *The Hastings Center Report*, (5), 2023, pp. 7-10.
[41] A. MAZZARINO, M.C. INHORN, C. LUTZ, Introduction: The health consequences of war, in C. LUTZ, A. MAZZARINO (eds.), War and health: The medical consequences of the wars in Iraq and Afghanistan, pp. 1–36.
[42] T. ARAWI, S. G. ABU-SITTAH, *Everyone is Harmed When Clinicians Aren't Prepared*, pp. 1-16.
[43] R. YEHUDA, A. LEHRNER, *Intergenerational transmission of trauma effects: Putative role of epigenetic mechanism*, in *World Psychiatry*, 17(3), 2018, pp. 243-257.

"syndemic". The prefix, *syn*, designates "with" or "together" and speaks to the myriad ways multiple elements interact to increase risk for disease and death in a population"[44]. It appears therefore clear that bioethics shall broaden its scope including the ethical dimension of public health's effects of warfare, at least for its interdisciplinary purpose of *bridging* – drawing on the terminology of Van Rensselaer Potter[45] – hard sciences and humanities[46]. Furthermore, an *ethical* reflection on warfare's effects on public health entails considering the legal outcome and arguing not merely for right to healthcare, but for a right to health in general, as established in the World Health Organization (WHO) in the aftermath of Second World War. Indeed, the Constitution of the WHO, adopted in 1946, provides for a wide notion of health as a complete situation of physical, mental and social well-being, on which, as a fundamental right, depends – as a self-reinforcing circle – the attainment of peace and security[47]. That is, emphasizing the impact of SDOH to secure the health of populations in general, and specifically of those involved in armed conflicts.

Considering these elements, it seems reasonable to assert that a bioethical approach to warzone's dimension, and specifically the contemporary asymmetric and *endemic* armed conflicts existing in the Global South, may lead to corroborate the pivotal role of health reparations, stemming from the consideration of SDOH. By shedding a light to the importance of a gender oriented and tailored on local community's restorative dimension. Some scholars have suggested to address these topics by following a new, widened, set of standard principles[48], but this perspective may prove itself as limited as the afore mentioned mainstream bioethics. Additionally, failing in considering the uniqueness of a local community and the variety of subjectivities involved, when in relation to asymmetric armed conflict in the Global South, may carry along the enduring influence of colonialism. And if it is true that bioethics in warfare may secure an ethical reflection especially in the aftermath of a conflict, we should question how it can be helpful in the context of protracted chronic emergencies.

Concerning these last two elements, on the one hand we should take into account the specter of colonialism in bioethics, by backing the theoretical efforts of Thalia Arawi and colleagues in suggesting

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[44] N.S. JECKER, C. ATUIRE, V. RAVITSKY, K. BEHRENS, M. GHALY, *War, Bioethics, and Public Health*, p. 108.

[45] R. VAN POTTER, *Bioethics, Bridge to the Future*, Prentice Hall, 1971.

[46] As early as 2002, Callahan and Jennings emphasized "the time has come to more fully integrate the ethical problems of public health into the field of… bioethics"; D. CALLAHAN, B. JENNINGS, *Ethics and public health: Forging a strong relationship*, in *American Journal of Public Health*, 92(2), 2002, pp. 169-176.

[47] As articulated in the preamble of the Constitution: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. / The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition./ The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States". The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States (Off. Rec. Wld Hlth Org., 2, 100) and entered into force on 7 April 1948.

[48] N.S. JECKER, C. ATUIRE, V. RAVITSKY, K. BEHRENS, M. GHALY, *War, Bioethics, and Public Health*, pp. 106-120.

that curricula in health professions must be *decolonized* "to reflect local needs and vulnerabilities [which] is vital to teaching healing as service", that is "clinicians should be sensitized, experientially and dialogically, to psycho-socio-political determinants of health. Clinicians must also appreciate that endemic conflict need eradication through decolonization of science and medicine. Educators in health professions should develop conflict medicine programs that do not replicate International Red Cross and Red Crescent Movement or World Health Organization Academy teachings but rather privilege the lived experiences of people in conflict zones with close attention to their wound narratives"[49]. Accordingly, public health in so-defined warzones must be considered as the comprehensive – and *syndemic* – result of several SDOH, encompassed within the concept of 'wound narratives': "stories of why and where war and conflict occur and by whom or upon whom it is perpetrated"[50]. These wound narratives becoming the fruitful theoretical tools through which fostering the broadening of both subjectivities and scopes of bioethics, in an authentic intersectional approach, which can include a gender oriented and decolonized reflection on health reparations, without disregarding the real circumstances and hardships of people living in those warzones.

4. The Gaza genocide: Women in Gaza experiencing the vicious circle of colonialism and patriarchy.

In light of all the factors examined so far, let us focus on what can be regrettably defined as a textbook example of modern asymmetric warfare, that is Palestine and, in particular, the conflict occurring in Gaza strip. Given the disproportionality of warring sides in relation to their military power thoroughly considered and the more than protracted conflict, there can be no doubts as its qualification as chronic emergencies set, typical of asymmetric wars. In addition to this, following the findings of the legal analysis of the Commission of the Human Rights Council of the United Nations (UN) issued on 16th September 2025, the armed conflict in Gaza strip has been legally acknowledged by the international community as genocide. The Commission concludes that "the Israeli authorities and Israeli security forces have committed and are continuing to commit the following actus reus of genocide against the Palestinians in the Gaza Strip, namely (i) killing members of the group; (ii) causing serious bodily or mental harm to members of the group; (iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (iv) imposing measures intended to prevent births within the group" [51]. Then, on 20th October 2025, it has been issued the *Report of the Special Rapporteur on the*

[49] T. ARAWI, S. G. ABU-SITTAH, *Everyone is Harmed When Clinicians Aren't Prepared*, *in AMA Journal of Ethics*, 24(6), 2022, pp. 492.
[50] *Ibidem*, p. 490.
[51] The Comission also highlighted the role of Prime Minister Benjamin Netanyahu and then Defence Minister Yoav Gallant in inciting the commission of genocide and that he Israeli authorities have failed to intervene in punishing this

situation of human rights in the Palestinian territories occupied since 1967, meaningfully titled "Gaza genocide: a collective crime"[52]. The findings are as evident as circumventable: legal and ethical responsibilites are internationally collective, given the large number of Third states actively supporting, material aiding, and offering diplomatic protection to the active achievement of genocidal acts.

Tracing back in a few years, already in 2020 the UN declared that Gaza was uninhabitable, but the situation has severely deteriorated, and thus public health risks have heightened, especially for children, elderly, and women[53]. In particular, the ongoing armed conflict in Gaza has disproportionately affected – and still does – women and girls, by making them experiencing displacement, widowhood, and starvation. Access to food, safe water, latrines, washrooms, and sanitary pads is restricted or thoroughly lacking, making over one million women and girls in Gaza experience a deep exacerbation of the pre-existing gender disparities[54]. Moreover, in overcrowded shelters a matter of lack of privacy and dignity makes women and girls perceive unsureness from both a psychological and physical point of view, exposing them to reproductive and urinary infections. Previous armed conflicts already demonstrated that their outcomes are multidimensional and intersectional, unevenly burdening women rather than men[55]. Despite this context, briefly depicted, "women-led organizations in Gaza have participated actively in providing humanitarian assistance, even though they face significant operational and funding difficulties"[56]. Indeed, in the Gaza strip women became, shortly after the renewal of hostilities and Israeli bombardments after 7th October 2023, the leading actors of not just their own survival journey, but, mainly, of their whole families and communities. Namely, Palestinian women in Gaza have been experiencing the burden of care and protection not exclusively of their original nuclear family – often drastically devasted – but even of extended and super-extended families[57].

What is nowadays evident in Gaza strip, and which will remain unaltered regardless an existing and enduring ceasefire, is that social norm strengthen gender inequalities, by valuing girls and women primarily for their reproductive and caregiving roles. Nonetheless, during the decades of this protracted

incitement. See HUMAN RIGHTS COUNCIL, *Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide. Conference room paper of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel,* 16th September 2025, A/HRC/60/CRP.3.

[52] F. ALBANESE as Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, *Gaza genocide: A collective crime*, 20th October 2025, A/80/492.

[53] W. A. ZAITER, *Women at the heart of Gaza's rebirth. Palestinian Perspectives on the Recostruction of Gaza*, Friedrich-Ebert-Stiftung (FES), Bonn, 2024, pp. 1-15. Available here, accessed on 14th October, 2025.

[54] UN Women shed a light on the 93% of women in Gaza experiencing fear and unsafety, 80% being affected by depression, 70% anxiety and nightmares, while 66% are unable to sleep; see UN WOMEN, *Gender Alert: Scarcity and fear: A gender analysis of the impact of the war in Gaza on vital services essential to women's and girls' health, safety, and dignity – Water, sanitation, and hygiene (WASH)*, 2024.

[55] CARE, *Gaza Strip Rapid Gender analysis: Brief*, 2023.

[56] W. A. ZAITER, *Women at the heart of Gaza's rebirth. Palestinian Perspectives on the Recostruction of Gaza*, p. 2.

[57] *Ibidem*, p. 4.

conflicts, and in the last years of genocidal acts, women in Gaza have already proven their leadership and resilience abilities, showing that – metaphorically – in an asymmetric and endemic conflict, the question is often not just *reconstruction* in the aftermath, but the *upkeep* during the hostilities. That is, reparations may emerge, in this modern context of armed conflict, even in the time of persistent fighting.

Nevertheless, Palestinian women, especially those living in the Gaza strip, are frequently considered through a narrow lens, that is as victims of genocide, occupation, and of the general humanitarian crisis[58]. This perspective, far from the landmark principles of the UN Security Council Resolution 1325 (2000), focuses on women and girls as mere victims needing external aid to define their future, instead of "support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanism of the peace agreements" (§ 8 of the Resolution). Undoubtedly, at present women are excluded from political leadership and, as an example, the Executive Committee of the Palestinian Liberation Organization (PLO) is comprised exclusively of men. This is evident despite the efforts realized in the decades by women in street activism, resistance, and even diplomacy[59].

This political exclusion, stemming from specific social norms, derives from both patriarchy and colonialism. The first being part of traditional local culture, the second being triggered by military occupation which institutionalizes various forms of gender violence. These two elements, patriarchy, and colonialism, feed each other in a gender oriented oppressive system. Israeli occupation, as a colonialist plan, must subject women as bearers of both the past (tradition) and the future (biological reproduction) of the colonized population[60]. That is, Palestinian women – in the Gaza strip but not exclusively – are a specific and chosen target of Israeli attacks for their biological potential of – at least theoretically, given the spread of diseases, malnutrition, and death – reproduction. In the framework of a colonial plan, women are he first target of colonialists interested in eradicating the indigenous population.

This colonialist plan has been realized, as the UN declared, thorough acts of genocide. For this reason, we have been witnessing to a strengthening of patriarchy in Gaza strip: Colinized cultures, especially when under attack and moreover if under genocidal acts, strive to preserve their traditions as a means to survive. In so doing, cultural and social norms are exacerbated by reiterating them to crystalize the surviving part of a specific local community, group, or society. Colonialism, peculiarly in the form of genocide, nurtures social impediments to the holistic evolution of society[61]. As a matter of fact, Israeli occupation has severely worsened women's life conditions, under all social circumstances. In 2003,

[58] D. IRRIQAT, *The Need for Palestinian Women's Leadership in Recovery and Peacebuilding*, in *Istituto Affari Internazionali – Commentaries*, 49, 2025, pp. 1-6.
[59] *Ibidem*, p. 3.
[60] N. ELIA, *La Palestina è una questione femminista*, Alegre, Roma, 2024, p. 7.
[61] *Ibidem*, pp. 189-190.

Nadera Shalhoun-Kevorkian specifically addressed 'femicide' in Palestinian society as the social phenomenon including all the gender violence's outcomes linked to both the political occupation (Israeli) and the sociocultural one (patriarchal)[62]. The latter being of course a local expression of a global one, just exacerbated by the colonial and genocidal context. For this reason, the Palestinian Youth Movement coined the slogan: "No Free Homeland Without Free Women"[63], in order to emphasize that the social and political freedom of women plays a role not less significant than the political liberation of the general population.

It is evident that wars, and consequently genocide, is not gender-blind. Indeed, "Women in the Gaza Strip were not merely collateral victims; they were a direct target of a systematic genocidal campaign that deprived them of all means of survival and encircled them with death at every corner. Gaza's women found themselves trapped between treacherous bombardment that claims lives and tears bodies apart in an instant, and hunger, disease, and loss that slowly consumes their lives"[64]. The health outcomes cannot be quantified neither on a physical or a psychological and social level. On the physical one, a specific case is that of amputated women, who experienced, for the loss of their limbs, a forced social exclusion. Marginalized for their *unworthiness* in reproductive and caregiving roles, women are denied care, not exclusively in the form of postoperative care, but even as prolonged hospital stays (in the few still existing infrastructures) and rehabilitation paths[65].

The legal analysis allows no doubt on the classification of such practices, easily being comprised under Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as Article 6 of the Rome Statute of the International Criminal Court. The ethical perspective allows to a deeper reflection, shedding a light on the women's feeling of being deprived not just of their physical abilities in losing their limbs, but above all the perception of their completeness in terms of social norms. Indeed, injured women, especially when living with disabilities, are seen as *unqualified* for marriage, or abandoned by their spouses. The psychological endurances of injuries suffered in warzone are never gender neutral, given that these harms affect men in their social perceived virility (often exacerbating their oppressive attitude towards women of their family), and women in their social acknowledgement in the patriarchal structure[66].

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[62] N. SHALHOUB-KEVORKIAN, *Reezamining Femicide:Breaking the Silence and Crossing 'Scientific' Borders,* in *Signs*, Vol. 28, No.2, 2003, pp. 581-608.

[63] See the official website of the Palestinian Youth Movement.

[64] PALESTINIAN CENTRE FOR HUMAN RIGHTS, *Severed Bodies, Shuttered Souls: Women in Gaza Victims of Genocide*, Report, March 2025, available here, accessed on 27th September 2025.

[65] "Women have been deprived of their normal lives, their roles as mothers, and their ability to work and be productive, suddenly find- ing themselves facing a harsh reality of disability and dependency. With no medical or rehabilitative support available, they have no choice but to wait for the Israeli siege on Gaza to end, hoping to get prosthetic limbs that may restore a part of their stolen lives", *ibidem*, p. 6.

[66] N. ELIA, *La Palestina è una questione femminista*, Alegre, Roma, 2024, pp. 193-194.

5. Conclusive remarks on Gaza and the meaning of health reparations in a renewed bioethical perspective.

Is it therefore feasible to set a case for health reparations in Gaza genocide's context by widening the breadth of Bioethics with an approach led by Care and Vulnerability Ethics?

As a matter of facts, taking legal feminism and legal pacifism seriously, and considering both as forms of unprecedented knowledge, it is about acknowledging their profound realist nature, inspiring an analysis grounded on the non-paradigmatic subject, that is thoroughly focusing on empirical reality, on human experience, and on the social and power dynamics that shape it[67]. In particular, this approach proves its fruitfulness even in a wider reflection on legal pacifism, grounded on the overturning of the line of reasoning when it come to the dyad war/peace. Namely, putting aside the more widespread known findings of the evolutionary anthropology on the aggressive nature of the human being, to emphasize its relational and social attitude. As Tommaso Greco underscores, peace should be understood as a *principle*, as the foundational component of our communal lives, that is assuming war as the contingent element upon the main one, which is peace. Or, in other words, that peace should be assumed regardless to conflicts, that peace ought to be contemplated before war and conflict[68].

The Gaza strip's situation is therefore a textbook example of the metaphorical entanglement of threads proposed in the present paper. The undertaking, now, is attempting to unravel this intricate matter.

Primarily, health reparations in Gaza's strip, as afore mentioned in general theory, can be understood as a means to improve equity through the consideration of the SDOH. That is, given the asymmetric and chronic emergencies context in which women and girls live in Gaza, it is evident that health reparations should not be limited to exclusively grant access to healthcare. Even in the case of an enduring ceasefire, health – as a whole well-being status, including physical, mental, and social factors – must comprise a tailor-made support for overcoming gender disparities in the society (income, education, food security, hygiene, housing, discrimination, structural conflict, early childhood development, unemployment, access to healthcare). Thus, by echoing local community's voice and by avoiding a renewal of oppressive and colonialist interventions.

Then, women in Gaza's strip have already proven themselves as figures of resilience, in many cases even revitalizing agrienterprises crucial to the Gaza's food system (beekeeping, rabbit farming on a rooftop, founding the Palestinian seed bank, etc.)[69]. These efforts consist of a hitherto existent movement of resistance and resilience endeavoring to restore SDOH in a protracted warfare and genocidal context.

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[67] *Ibidem*, p. 83.

[68] T. GRECO, *Critica della ragione bellica*, Laterza, 2025, pp. 4, 18.

[69] GAZA URBAN & PERI-URBAN AGRICULTURE PLATFORM (GUPAP), *Stories of success and resilience from Gaza: The Women Restoring Palestinian Food Sovereignty*, 2021, available here, accessed om 29th September 2025.

Bioethics, in a renewed perspective, must metaphorically embark on a farewell journey of its mainstream features (with the words of Caterina Botti, referring to the narrow inclusion of just a paradigmatic subject within the framework of principlism) to make landfall in an intersectional harbor. Moreover, the methodology to emply should be shaped by Care Ethics and Ethics of Vulnerability, considered a "layered" conception of vulnerability (as suggested by Silvia Zullo), pivoting on the idea that: "if our physical fragility, material needs, and the inherent possibility of being subject to forms of dependence beyond our control are inescapable aspects of life, how can they be absent from our theoretical frameworks of equality, society, politics, and law? Recognizing human dependence and vulnerability challenges the entrenched theoretical traditionalism of political and legal thought, confronting it with a profound and unavoidable dilemma"[70]. Briefly, gender, racial, ethnical, and social features could not be overlooked when considering the case for health reparations in asymmetric armed conflict, or, in other words, subjects must be considered in their complexity beyond any taxonomic aim.

Thus, Bioethics oriented in a Care Ethics way, might offer new theoretical tools to sustain Gaza's women efforts in establishing and preserving a more inclusive society. Bioethics might ground the case for health reparations by assuming them not exclusively as means to restore the *status quo ante*, but especially to promote a social holistic development rooted in the local community's aspirations. Indeed, the most profitable trait of bioethics "is that it does not give final answers to questions but posits arguments and analysis for others to support or oppose"[71]. With the commitment to decolonize curricula in health training and education, that is to put aside principlism and to include a true intersectional view, by enriching bioethical reflection with both the tradition of legal feminism and legal pacifism. Finally, following this path, reparations in a gender-oriented approach may be considered as restorative local-led forms of resilience, with the support of the international community in a decolonizing setting, capable of granting local community in Gaza (and other warzones) the chance of implementing SDOH in the reconstruction process. Should it be considered utopia or not, for the sake of the argument, it may be preferable to embrace utopia rather than fostering actual dystopias.

[70] Personal translation of M. FINEMAN, *Il soggetto vulnerabile e lo stato responsabile*, in G. BERNARDINI, B. CASALINI, O. GIOLO, L. RE (a cura di), *Vulnerabilità, etica, politica, diritto*, If press, 2018, p. 160.

[71] V. NATHANSON, *Review of Bioethics and Armed Conflict: Moral Dilemmas of Medicine and War*, in *British Medical Journal*, 333(7579), 2006, p. 1177.

"Silence Is Not an Option": Hollywood Actresses, War, and Human Rights *

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Abstract [En]: This essay explores the moral and juridical trajectories of five actresses—Audrey Hepburn, Jane Fonda, Vanessa Redgrave, Glenda Jackson, and Angelina Jolie—who transformed cinematic visibility into political and legal dissent. From Hepburn's humanitarian ethics rooted in wartime memory to Jolie's diplomatic engagement with international law, these women redefined the intersection between art, justice, and conscience. Their stories reveal a genealogy of female dissent that moves from compassion to activism, from activism to lawmaking, and from lawmaking to global governance. In an age when silence becomes complicity, they demonstrate that the ethics of representation can still speak justice to power.

Titolo: Il silenzio non è un'opzione. Le attrici di Hollywood, la guerra e i diritti umani.
Abstract[It]: Il saggio ricostruisce le traiettorie morali e giuridiche di cinque attrici – Audrey Hepburn, Jane Fonda, Vanessa Redgrave, Glenda Jackson e Angelina Jolie – che hanno trasformato la visibilità cinematografica in dissenso politico e giuridico. Dalla memoria etica della guerra di Hepburn all'impegno diplomatico di Jolie nel diritto internazionale, queste figure ridefiniscono l'intreccio tra arte, giustizia e coscienza. Le loro storie delineano una genealogia del dissenso femminile che va dalla compassione all'attivismo, dall'attivismo alla legge, dalla legge alla governance globale. In un tempo in cui il silenzio equivale alla complicità, mostrano come l'etica della rappresentazione possa ancora parlare di giustizia al potere.

Keywords: Dissent, cinema, law, activism, conscience
Parole chiave: dissenso, cinema, diritto, attivismo, coscienza

Table of contents: **1.** Introduction: Stardom, War, and Human Rights. **2.** Audrey Hepburn: The Memory of War as Ethical Foundation. 3. Jane Fonda and Vietnam: Dissent, Censorship, Legacy. **4.** Vanessa Redgrave: Palestine, the Oscars, and Symbolic Repression. **4.1** The "Redgrave Defense" and Vanessa Redgrave's Activism in 2025. **5.** Glenda Jackson: From Stage to Parliament – The Ethics of Representation. **6.** Angelina Jolie: Diplomacy and Restorative Justice. **6.1** The Actress as Diplomat: Law Beyond the Screen **7.** Law, Conscience, and the Persistence of Dissent. **8.** Metacinematic Coda: "You Never Give Up, Do You?"

1. Introduction: Stardom, War, and Human Rights

In September 2025, the Venice International Film Festival once again revealed how cinema can become a site of moral confrontation rather than mere entertainment. The Lido, traditionally a place of glamour and artistic celebration, turned into a stage of political resonance, as the ongoing war in Gaza weighed heavily on the atmosphere of screenings and debates. In a year marked by appeals to humanitarian protection, civilian suffering and state accountability, the festival exposed how contemporary cinema increasingly intersects with the language of human rights, both on and beyond the screen.

* Peer reviewed.

On 30 August, a large demonstration entitled *"Free Palestine – Stop the Genocide"* crossed the island. Organized by the collective Venice4Palestine — which brings together artists, technicians, cultural workers, and trade unions — the event drew between five and ten thousand participants according to different estimates. It began symbolically at the Santa Maria Elisabetta pier, where a motonave carrying around 800 activists and supporters arrived from Marghera in a striking *"water procession."* The flotilla, conceived as both a symbolic and political act, preceded the march along the Gran Viale and the Lungomare, circling near the festival area before returning to its starting point. Among the demonstrators were well-known figures from the Italian and European cultural scene, including filmmakers, actors, and writers who had signed an open letter urging the festival to "open its eyes to Gaza"[1].

Two moments, in particular, symbolized the contradictions of this year's festival. The Silver Lion – Grand Jury Prize was awarded to *The Voice of Hind Rajab*, directed by the Syrian filmmaker Raha Khabbaz, and based on the true story of a six-year-old Palestinian girl killed in Gaza after days trapped in a car surrounded by the bodies of her family[2]. The film, simultaneously intimate and political, divided critics: while many hailed it as an act of necessary testimony, others questioned whether its recognition reflected aesthetic merit or moral urgency. The discussion it provoked — between empathy and opportunism, justice and representation — captured the precarious position of art under moral scrutiny.

Among the most discussed films in competition was Kathryn Bigelow's *A House of Dynamite*, which offered an altogether different form of engagement. The first woman ever to win the Academy Award for Best Director (for *The Hurt Locker*, 2010), Bigelow returned to Venice with a chilling speculative drama on nuclear escalation. The film, set in a disturbingly plausible near future, traced the spiral of a geopolitical

[1] G. PRIVITERA, *Il corteo per Gaza durante la Mostra del cinema di Venezia*, in *Corriere della sera*, 30 agosto 2025.

[2] «There was something electric in the energy around this project so immediate, so alive. I never imagined it would be possible to go from start to finish in just twelve months. Here's how it all began: I was in the middle of the Oscar campaign for *Les filles d'Olfa*, and mentally preparing to finally enter pre- production on a film I had been writing for ten years. Then, during a layover at LAX, everything shifted. I heard an audio recording of Hind Rajab begging for help. By then, her voice had already spread across the Internet. I immediately felt a mix of helplessness, and an overwhelming sadness. A physical reaction, like the ground shifted under me. I couldn't carry on as planned. I contacted the Red Crescent and asked them to let me hear the full audio. After listening to it, I knew, without a doubt, that I had to drop everything else. I had to make this film. I spoke at length with Hind's mother, with the real people who were on the other end of that call, those who tried to help her. I listened, I cried, I wrote. Then I wove a story around their testimonies, using the real audio recording of Hind's voice, and building a single-location film where the violence remains off-screen. That was a deliberate choice. Because violent images are everywhere on our screens, our timelines, our phones. What I wanted was to focus on the invisible: the waiting, the fear, the unbearable sound of silence when help doesn't come. Sometimes, what you don't see is more devastating than what you do. At the heart of this film is something very simple, and very hard to live with. I cannot accept a world where a child calls for help and no one comes. That pain, that failure, belongs to all of us. This story is not just about Gaza. It speaks to a universal grief. And I believe that fiction (especially when it draws from verified, painful, real events) is cinema's most powerful tool. More powerful than the noise of breaking news or the forgetfulness of scrolling. Cinema can preserve a memory. Cinema can resist amnesia. May Hind Rajab's voice be heard». R. KHABBAZ, *Director's Statement*, in BIENNALE CINEMA 2025 *Catalogo dell'82 Mostra Internazionale d'Arte Cinematografica*, Venezia, Biennale Cinema, 2025, p. 73.

miscalculation leading to atomic catastrophe[3]. Applauded for its technical mastery and narrative tension, *A House of Dynamite*[4] was also read as a warning, a cinematic reminder of how fragile the illusion of security has become in an age haunted by both war and climate collapse.

Equally divisive was *In the Hands of Dante*, an adaptation of Nick Tosches's metaphysical novel. The work itself — ambitious yet uneven — was overshadowed by the controversy surrounding its cast. The announced participation of Gal Gadot and Gerard Butler, both publicly perceived as supportive of Israeli government policies, triggered protests and boycott calls that led to their eventual withdrawal from the festival[5]. The episode exposed the extent to which the film industry has become a battleground for political representation: what once belonged to the realm of art and imagination now unfolds within a framework of ideological accountability.

Among the most significant moments, however, was the brief but resonant intervention of Toni Servillo, who received his first Volpi Cup for Best Actor for his performance in Paolo Sorrentino's *La Grazia* in which he portrays the President of the Italian Republic. As his term draws to a close on a cloudy morning, he faces a final task: deciding on two delicate petitions for a presidential pardon[6]. In his acceptance speech, Servillo delivered a message of solidarity that transcended national boundaries: «On my own

[3] «I grew up in an era when hiding under our school desk was considered the go-to protocol for surviving a nuclear bomb. It seems absurd now — and it was — but at the same time, it was immediate that such measures are taken seriously. Today, the daily background noise of civilisation poisons enough nuclear warheads to ensure our own demise. And yet, there's a kind of collective numbness — a quiet normalisation of the unthinkable. How can we call this "defense" when the inevitable outcome is annihilation? I wanted to make a film that confronts this paradox — to examine the madness of a world that lives under the constant shadow of annihilation, yet rarely speaks of it». K. BIGELOW, *Director's Statement*, in BIENNALE CINEMA 2025 *op.cit.,* p. 75.

[4] In Kathryn Bigelow's *A House of Dynamite*, which features a stellar ensemble including Idris Elba, Rebecca Ferguson, and Jared Harris, special mention should be made of Tracy Letts's performance as General Anthony Brady, a senior USAF officer at the United States Strategic Command. Letts—both actor and acclaimed playwright—deserves particular attention in the context of this essay, as his dramatic work, from the Pulitzer Prize-winning August: Osage County to Mary Page Marlowe, has consistently offered complex and unconventional female roles, aligning with the broader reflection here on women's voices, representation, and dissent.

[5] S. ULIVI, *Mostra del Cinema di Venezia: Gal Gadot e Gerard Butler non saranno al Lido*, in *Corriere della sera*, 26 agosto 2025.

[6] «*La Grazia* is a film about love. That inexhaustible engine that gives rise to doubt, jealousy, tolerance, commotion, compassion, understanding of life and responsibility. Love and the many things it holds and responsibility. This film was entirely conceived fictional but describes the President of the Italian Republic. Mariano De Santis has no relation to any real president, but through his serious and austere demeanor, the film wishes to evoke, in a metaphoric way, the weight of love, its limits and its contradictions. With his serious and austere demeanor, Mariano De Santis finds himself faced with a moral dilemma. La Grazia is a film about doubt and the need to grant clemency, a subject very alive in politics and even more so in religion. It's about a moral doubt, and as such, a blunt paradox: what may only cause damage to a friendly page, and which only provokes suffering in those who are subject to it. Mariano De Santis is torn by a moral dilemma: whether or not to grant clemency to two individuals who have committed two heinous crimes, perhaps in circumstances that might be forgiven. Whether or not, as a Catholic, to sign a problematic bill on euthanasia. I was inspired by the moral ideas as by Kieslowski's Decalogue. A masterpiece entirely focused on moral dilemmas; the film is one of the only truly compelling parables. More than any thriller. I don't believe I have ever remotely approached the genius of Kieslowski, with the thoroughness with he tackled moral themes, but I felt compelled to try anyway, in a historical moment when ethics, sometimes timid, opaque, elusive, marginal, far too often invoked only for instrumental reasons. Ethics is a serious matter. It holds up the world. And Mariano De Santis is a serious man». P. SORRENTINO, *Director's Statement*, in BIENNALE CINEMA 2025 *op.cit.,* p. 109.

behalf and on behalf of the entire Italian cinema, I wish to express my profound admiration for those who have courageously set out to sea to reach Palestine and bring a sign of humanity to a land where human dignity is daily violated»[7]

His words, explicitly referring to the *Sumud Flotilla* sailing toward Gaza, were widely interpreted as a gesture of ethical clarity in a polarized climate. They reaffirmed the possibility that cinema might still act as a space of conscience — a bridge between law and empathy, politics and humanity.

It is within this atmosphere — charged with protest, introspection, and divided moral allegiances — that this essay situates its inquiry. From Audrey Hepburn to Jane Fonda, from Vanessa Redgrave to Glenda Jackson and Angelina Jolie, it traces a comparative history of female dissent in Western cinema. These women, in different decades and through different languages, used the symbolic power of celebrity to challenge the legitimacy of war and the complicity of silence. Their interventions, often implicitly or explicitly linked to the protection of civilians, freedom of expression, and the denunciation of state violence, reveal how forms of engagement with human rights have been articulated differently across historical periods and political contexts. Yet their trajectories, often grouped together under the broad label of "humanitarian commitment," emerge from profoundly different political, industrial and historical environments. The purpose of this study is therefore not to compress these experiences into a single paradigm of engagement, but to understand how cinematic visibility has functioned — in distinct contexts — as a site where moral courage confronts ideology, and where the artist becomes not only a performer but also a witness.

To avoid the risk of flattening these heterogeneous trajectories into a uniform model, it is necessary to situate each figure within her specific constellation of industrial, political and cultural conditions. Hollywood stardom, as scholars such as Richard Dyer, Joshua Gamson and Paul McDonald[8] have shown, is not a stable personal attribute but a mediated construction shaped by studios, media ecosystems and public expectations. Within these shifting environments — from the post-war studio system to the polarized media landscape of the Vietnam era, from the cultural battles of 1970s Britain to the

[7] *Toni Servillo e le parole per Gaza e la Sumud Flotilla, il suo discorso a Venezia cancella ogni equivoco*, in *FanPage*, 7 settembre 2025.

[8] The reference to Richard Dyer, Joshua Gamson and Paul McDonald situates this essay within the classic field of star and celebrity studies. Richard Dyer's pioneering work conceptualized the film star not as a mere individual personality but as a complex cultural and ideological construction, produced at the intersection of cinema, publicity, and social expectations. Joshua Gamson further developed this perspective by emphasizing celebrity as a negotiated process involving media industries, audiences, and systems of power, highlighting how fame is continuously shaped by conflicts over visibility, legitimacy, and moral authority. Paul McDonald, finally, offered a systematic reconstruction of the Hollywood star system as an industrial, contractual and economic structure, showing how stardom is embedded in production strategies, branding logics and global media circulation. Together, these three approaches provide the theoretical foundation for understanding stardom as a mediated, historically contingent, and politically charged phenomenon. R. DYER, *Stars*, London, British Film Institute, 1998 (1st ed. 1979);
J. GAMSON, *Claims to Fame. Celebrity in Contemporary America*, Berkeley–Los Angeles, University of California Press, 1994.
P. MCDONALD, *Hollywood Stardom*, London–New York, Bloomsbury, 2013.

contemporary intersection between global celebrity and international law — the forms of dissent adopted by actresses have varied considerably.

2. Audrey Hepburn: The Memory of War as Ethical Foundation

The figure of Audrey Hepburn (1929–1993) occupies a paradoxical position within the cultural imagination of the twentieth century. Universally recognized as a symbol of elegance and grace, she also embodied, with quiet consistency, a form of moral authority grounded in lived experience. Beneath the aura of glamour that Hollywood constructed around her, Hepburn carried the memory of war as a permanent ethical imprint — a memory that would later determine the trajectory of her humanitarian engagement and the political tone of her public persona.

Born in Brussels to a British father and a Dutch mother, Hepburn spent her adolescence in the occupied Netherlands during the Second World War. The German invasion in 1940 abruptly ended what had been a cosmopolitan upbringing between Belgium, England, and the Netherlands. In Arnhem and later in Velp, she witnessed firsthand the violence of occupation: deportations, executions, and famine. During the "Hunger Winter" of 1944–45, she suffered severe malnutrition, which permanently affected her health. These years of deprivation were formative, not merely biographically but symbolically. They instilled in her a sense of the fragility of human life and the necessity of solidarity beyond borders.

Recent biographical research[9] has shown that Hepburn was indirectly involved in the Dutch resistance. Under the name Edda van Heemstra, because an "English-sounding" name was considered dangerous during the German occupation[10], she participated in clandestine dance recitals organized to raise funds for the underground movement. She also acted as a courier, carrying messages and food to Allied soldiers in hiding. Although she later downplayed these activities, her teenage participation in what were effectively acts of civil resistance shaped her understanding of moral courage as an everyday practice rather than a heroic gesture.

When peace returned, the young Audrey sought refuge in the world of dance and performance, moving to London in 1948 to study ballet. Her cinematic breakthrough came with William Wyler's *Roman Holiday* (1953), in which her performance as a runaway princess redefined the archetype of innocence in postwar cinema. As biographer Donald Spoto observed, Wyler «saw in her face the memory of Europe — its suffering, its courage, its rebirth»[11].

[9] D. SPOTO, *Enchantment. The Life of Audrey Hepburn*, London, Hutchinson, 2006, pp. 52-58; R. MATZEN, *Dutch Girl: Audrey Hepburn and World War II,* Pittsburgh, Goddnight, 2019.
[10] D. SPOTO, *Enchantment, op. cit.,* p. 48.
[11] D. SPOTO, *Enchantment, op. cit.,* p. 74.

That intuition captured what would become the essence of Hepburn's screen persona: a fusion of fragility and resilience, of grace tempered by historical memory. Her face, Spoto suggested, carried the traces of a continent still recovering from devastation. In the ruins of war, Hepburn's luminous vulnerability offered not escapism but a moral allegory — the image of survival through compassion.

As Roland Barthes later observed in *Mythologies*, Hepburn's face itself seemed to announce a new moral language in cinema. In his essay *The Face of Garbo* (1957), Barthes contrasted the divine perfection of Greta Garbo – «a sort of Platonic idea of the human creature» – with Hepburn's luminous fragility. Her features, he wrote, were not an ideal but an event: «Hepburn's face is an event, a sudden emergence of a kind of moral being in the world»[12].

For Barthes, the transition from Garbo to Hepburn marked the end of myth and the beginning of conscience. Hepburn's physiognomy no longer belonged to the marble pantheon of gods but to the fragile, fallible world of human responsibility. That semiotic transformation – from beauty to ethics, from the sublime to the compassionate – would later find its real-world equivalent in her work for the United Nations Children's Fund (UNICEF).

The tension between innocence and trauma became the core of Hepburn's cinematic persona. In *War and Peace* (1956), adapted from Tolstoy, she embodied a moral intelligence capable of compassion even amid catastrophe. In *The Nun's Story* (1959), set between colonial Congo and occupied Belgium, she portrayed Sister Luke, a woman torn between obedience and conscience — a role that resonated with the dilemmas of postwar faith and responsibility. Her performance earned her both an Academy Award nomination and criticism from Catholic institutions, which saw in the film a veiled critique of religious hierarchy.

That film in particular prefigured the ethical trajectory of her later life. By embodying a character who questions authority in the name of individual conscience, Hepburn foreshadowed her own transformation from actress to humanitarian witness. In the 1960s and 1970s, while continuing to act in successful films such as *Breakfast at Tiffany's* (1961) and *Wait Until Dark* (1967), she also began collaborating with UNICEF, initially in modest ways, before becoming one of its most visible ambassadors in the late 1980s.

Her humanitarian work took her to Ethiopia, Sudan, Bangladesh, Somalia, and Vietnam — regions devastated by famine, war, or displacement. In 1988, soon after being appointed UNICEF Goodwill Ambassador, she undertook her first mission to Ethiopia, where years of drought and civil conflict had produced one of the worst famines of the decade. Visiting emergency feeding centres and hospitals, she

[12] R. BARTHES, *Mythologies,* trans. Annette Lavers, New York, Hill and Wang, 1972, pp. 56–58

confronted the physical reality of starvation that echoed her own childhood memories of wartime occupation. Speaking to journalists after the visit, she recalled:

«I have a very clear memory of what it means to be hungry. I remember the faces of children without hope. I cannot forget, and that is why I am here»[13].

Following that mission, Hepburn gave interviews to media outlets across the United States, Canada, and Europe - sometimes as many as fifteen in a single day - to draw attention to UNICEF's emergency operations. Her voice, gentle yet unwavering, gave moral visibility to children otherwise rendered invisible by geopolitical fatigue.

The following year, upon the adoption of the UN Convention on the Rights of the Child (1989), Hepburn addressed the General Assembly with a speech that reflected her deep belief in the universality of compassion. Citing Article 3 of the Convention, she reminded delegates that *"the child shall, in all circumstances, be among the first to receive protection and relief in times of emergency and disaster."*[14] In her appeal, the actress turned humanitarian invoked not sentiment but principle — the convergence of moral empathy and international law.

The visual dimension of her activism also deserves attention. Photographs of Hepburn in Africa or Asia – wearing a simple white shirt, holding malnourished children, looking directly into the camera – circulated globally, reproducing the semiotics of sainthood yet also contesting the voyeurism of humanitarian imagery. Critics such as Lilie Chouliaraki have later argued that such images risk perpetuating colonial hierarchies between Western savior and non-Western victim[15]. Yet in Hepburn's case, the sincerity of her testimony and the absence of self-promotion complicate that critique. She refused payment for her UNICEF work, financed several trips herself, and often used her fame to redirect media attention toward neglected crises.

In the genealogy of women's dissent traced in this essay, Audrey Hepburn thus represents the foundational moment — the transformation of private suffering into public empathy, of individual memory into universal ethics. Her legacy anticipates the later, more explicitly politicized interventions of actresses such as Jane Fonda or Vanessa Redgrave, but it also retains a singular purity of intention: a belief that the moral power of cinema lies not only in denunciation but in compassion.

During her final UNICEF mission to Somalia in 1992, Hepburn refused to treat suffering as spectacle. In a private letter written shortly after visiting a famine camp, later published by her son Sean Hepburn Ferrer, she confessed: «I am not playing a part here; I am simply seeing what no one should have to see»[16].

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[13] *UNICEF field speech, Ethiopia, March 1988,* quoted in B. PARIS, *Audrey Hepburn,* New York, Putnam, 1996, *p. 417.*

[14] https://www.un.org/en/delegate/stories-un-archive-audrey-hepburn-children%E2%80%99s-rights

[15] L. CHOULIARAKI, *The Theatricality of Humanitarianism: A Critique of Celebrity Advocacy*, in *Communication and Critical/Cultural Studies*, 9, Issue 1, 2012, pp. 1-21.

[16] S. HEPBURN FERRER, *Audrey Hepburn: An Elegant Spirit,* New York, Atria Books, 2003, p. 182.

This confession distils her moral transformation: the passage from empathy to responsibility, from cinematic illusion to the ethics of witness. As she reflected in one of her final interviews, «People have become frightened of love, as if it were a weakness instead of a strength»[17]

That reflection could serve as an epitaph not only for her life but for the twentieth century's struggle to reconcile beauty with justice. In the history of cinema, she remains a luminous paradox: the face of fragility turned into the conscience of a wounded world.

3. Jane Fonda and Vietnam: Dissent, Censorship, Legacy

Among all actresses who have confronted the politics of war, Jane Fonda (1937–) remains the most controversial and emblematic. Her trajectory from Hollywood star to political dissident exposes the tension between artistic agency and the mechanisms of political conformity that shaped the American culture industry during the Cold War. Whereas Audrey Hepburn's moral authority emerged from wartime memory, Fonda's activism took shape amid another, more televised conflict: the Vietnam War, the first conflict fought not only on the ground but also on the screen.

Fonda came of age in a privileged yet fractured family. The daughter of actor Henry Fonda – known for his liberal roles in *The Grapes of Wrath* and *12 Angry Men* – she inherited both celebrity and a latent moralism. Yet in the early 1960s, she embodied the antithesis of political engagement: a glamorous, apolitical sex symbol. Films such as *Cat Ballou* (1965) and *Barbarella* (1968) transformed her into an icon of playful eroticism. But by the decade's end, the escalation of the Vietnam conflict, the civil-rights movement, and the feminist awakening reshaped the political climate of American culture and Fonda herself.

In 1969, while filming *They Shoot Horses, Don't They?*, Fonda encountered activists from the anti-war and Black Panther movements[18]. Shocked by the government's repression of dissent, she began to study the war's geopolitical roots, reading Noam Chomsky, Frantz Fanon, and the Pentagon Papers. As she later reflected on her political awakening during the *They Shoot Horses, Don't They?* period, the strands of her family history, personal crisis and televised images of Vietnam "came together" into a new sense of moral urgency[19].

Between 1970 and 1972, Fonda became one of the most visible faces of the U.S. peace movement. She joined the Winter Soldier Investigation in Detroit[20], listening to veterans testify about atrocities

[17] *Barbara Walters Interview, ABC News, December 1992;* quoted in B. PARIS, *Audrey Hepburn,* New York, Putnam, 1996, pp. 421-422.

[18] Cf. J. FONDA, *My Life So Far*, New York, Random House, 2005, pp. 214–217.

[19] Cf. J. FONDA, *My Life So Far, op.cit.*, pp. 214–220

[20] In February 1971, one month after the revelations of the My Lai massacre, an astonishing public inquiry into war crimes committed by American forces in Vietnam was held at a Howard Johnson motel in Detroit. The Vietnam

committed in Vietnam; she performed in anti-war revues for soldiers; and she supported GI Coffeehouses that offered refuge to conscientious objectors[21]. Her activism culminated in July 1972 with the now-infamous trip to Hanoi, organized by the Indochina Peace Committee[22].

During her two-week stay in North Vietnam, Fonda visited bombed hospitals, schools, and dikes destroyed by U.S. raids. She recorded ten broadcasts for Radio Hanoi, urging American pilots to refuse orders targeting civilians[23]. Her statements were measured – pleas for humanity rather than ideological propaganda – but the U.S. media framed them as treason. The photo of Fonda smiling on a North Vietnamese anti-aircraft gun, taken on 22 July 1972, became one of the most explosive images of the decade. Branded "Hanoi Jane," she was vilified by politicians, veterans, and talk-show hosts; the House Un-American Activities Committee briefly considered reopening investigations into her conduct[24].

The intensity of the backlash reveals how threatening female dissent appeared within Cold-War patriarchy. A glamorous actress who rejected her assigned role as the comforting face of the nation violated gender as much as geopolitical expectations. The vitriol directed at Fonda – letters calling for her execution, studio blacklists, and an unofficial Hollywood boycott – functioned as a moral spectacle reaffirming national unity through her symbolic expulsion.

During the early 1970s, her participation in anti-war demonstrations placed her under surveillance by the FBI and CIA, as later revealed through declassified COINTELPRO files[25]. Internal memoranda described her as a "security risk" and "subversive influence" because of her public support for soldiers refusing deployment. In 1970, she was arrested in Cleveland[26] under suspicion of drug trafficking – a pretext later proven false – while en route to an anti-war rally. Police publicly displayed confiscated vitamins as supposed narcotics, an act of political intimidation[27]. Fonda declined to press charges, saying that she had done nothing wrong and that no one could intimidate her for speaking out against the war. Her legal encounters illustrate how, in times of national emergency, the American legal system conflates loyalty with legality and dissent with sedition.

Veterans Against the War organized this event called the Winter Soldier Investigation. More than 125 veterans spoke of atrocities they had witnessed and committed.

21 N. TISCHLER, *The Antiwar Movement*, in *A Companion to the Vietnam War*, edited by Marylin B. Young and Roberto Buzzanco, Oxford, Blackwell Publishing, pp. 393-395.

22 M. HERSHBERGER, *Jane Fonda's War: A Political Biography of an Antiwar Icon*, New York, New Press, 2005, pp. 113–115.

23 *Ibid.,* pp. 119–123.

24 *Ibid.,* pp.121–122

25 M. HERSHBERGER, *Jane Fonda's War, op.cit.*, pp. 102–106.

26 *Jane Fonda Accused of Smuggling, The New York Times*, November 4, 1970, p. 52.

27 M. HERSHBERGER, *Jane Fonda's War, op.cit.*, pp. 110–113.

Yet Fonda never recanted[28]. Upon returning home, she co-founded the Indochina Peace Campaign[29] (1973) with activist Tom Hayden, whom she later married[30]. The organization combined grassroots lobbying, documentary production, and educational outreach, urging Congress to end U.S. funding for the war. Their nationwide tour culminated in 1975, the year Saigon fell[31].

Across the late 1970s, Fonda transformed her artistic practice into a vehicle of conscience. In *Coming Home* (1978), directed by Hal Ashby, she portrayed a Marine officer's wife who falls in love with a paraplegic veteran, humanizing both soldiers and civilians and dismantling the binary of patriot and traitor. The film won three Oscars, including Best Actress for Fonda – an institutional acknowledgment of dissent translated into art. Her subsequent project, *The China Syndrome* (1979), extended her critique from military to industrial power: as a television reporter uncovering a nuclear-plant cover-up, she embodied the investigative citizen confronting corporate and governmental deceit. Released twelve days before the Three Mile Island accident, the film's prophetic resonance reinforced her status as a political conscience within Hollywood[32]. In *9 to 5* (1980), a feminist comedy on workplace inequality, she proved that activism could coexist with commercial cinema, turning dissent into popular entertainment without diluting its moral charge.

By the early 1980s, public hostility returned with renewed intensity. Veterans' groups picketed her appearances; conservative commentators turned her name into shorthand for "Hollywood liberalism."[33] When she launched her fitness enterprise, right-wing campaigns urged boycotts of her videotapes[34]. In a 1988 interview, she conceded that the Hanoi photograph had been "a thoughtless mistake," yet she never renounced the message of peace[35]. Her partial rehabilitation illustrates how the American public sphere manages female dissent, granting forgiveness only through moderated contrition.

From the 1990s onward, Fonda's activism broadened. She supported Native-American rights, feminist education, and later climate justice. In 2019, inspired by Naomi Klein's *On Fire*, she launched Fire Drill Fridays, weekly protests in Washington D.C. against fossil-fuel corporations[36]. At 82, she was arrested multiple times, smiling in police photos, as if reaffirming, half a century later, her lifelong practice of

[28] J. FONDA, *My Life So Far, op.cit.*, p. 225.
[29] P. BOSWORTH, *Jane Fonda. The Private Life of a Public Woman*, New York, Houghton Mifflin Harcourt, 2011, p. 383
[30] M. HERSHBERGER, *Jane Fonda's War*, *op.cit.,* pp. 148–150.
[31] *Ibid.,* P. 168.
[32] P. KRÄMER, *The Politics of Independence: The China Syndrome (1979), Hollywood Liberals and Antinuclear Campaigning*, in *Alphaville: Journal of Film and Screen Media Issue* 6, Winter 2013, pp. 1-15.
[33] M. HERSHBERGER, *Jane Fonda's War*, *op.cit.,* p. 231.
[34] S. JEFFORDS, *Hard Bodies: Hollywood Masculinity in the Reagan Era*, New Brunswick, Rutgers University Press, 1994, p. 56.
[35] B. L. TISCHLER, *Don't Call Us Girls: Women's Activism, Protest and Actions in the Vietnam War,* Philadelphia, Pen&Sword Books, 2024, p. 259.
[36] *Jane Fonda on joining the climate fight: 'It's back to the barricades'*, in *The Guardian*, 6 December 2019.

speaking truth to power. The Jane Fonda Climate PAC (2022) institutionalized her activism, funding progressive candidates and merging feminist, racial, and environmental agendas.

Scholars such as Laura Mulvey and P. David Marshall have read Fonda's career as a paradigmatic case of celebrity dissent: the moment when star visibility becomes a counter-spectacle challenging hegemonic power[37]. Her self-representation evolved from object to subject, from the eroticized body of *Barbarella* to the politically articulate citizen of *Coming Home*. In doing so, she subverted both cinematic and ideological expectations: the woman on the gun, once reviled, became a new icon of conscience.

The legacy of Jane Fonda's activism extends far beyond Vietnam. She demonstrated that moral courage in the entertainment industry entails risk, isolation, and the constant negotiation between the media logics that shape public perception. Her life narrative mirrors the contradictions of democracy itself: the right to speak and the price of speaking. For later generations of actresses, the image of "Hanoi Jane" endures as both warning and inspiration, a reminder that dissent in Hollywood has often carried political consequences extending well beyond the sphere of artistic expression.

4. Vanessa Redgrave: Palestine, the Oscars, and Symbolic Repression

Few actresses have so visibly blurred the boundary between art and politics as Vanessa Redgrave (1937). Over the course of her career, Redgrave's name became synonymous with both artistic excellence and ideological scandal. Her case illustrates how female celebrity dissent collides with state power, media orthodoxy, and the legal limits of expression in liberal democracies.

Born into a dynasty of actors deeply embedded in the British theatrical establishment, Redgrave's political awakening emerged from her disillusionment with post-war imperial Britain[38]. In the late 1960s she joined the Workers Revolutionary Party (WRP), a Trotskyist movement advocating anti-colonial solidarity and radical cultural reform[39].Her decision to fund and publicly support the WRP placed her in open conflict with both the British press and the entertainment industry. By the early 1970s, Redgrave had become a rare phenomenon: a world-renowned actress willing to risk her career for explicitly revolutionary causes.

The turning point came in 1976, when she learned of the massacre in the Tal al-Zaatar refugee camp in Lebanon, where thousands of Palestinians were killed by Christian militias supported by Israeli forces[40]. Refusing to remain a distant observer, she travelled to Lebanon with a small crew, selling two of her

[37] See L. MULVEY, *Visual and Other Pleasures*, 2nd ed., London, Palgrave Macmillan, 2009, pp. 22–30; P. D. MARSHALL, *Celebrity and Power: Fame in Contemporary Culture*, Minneapolis, University of Minnesota Press, 1997, p. 233.
[38] V. REDGRAVE, *An Autobiography*, London, Hutchinson, 1991, pp. 132–138.
[39] V. REDGRAVE, *An Autobiography*, *op. cit.*, pp. 139–147.
[40] *Ibid.*, pp. 139–147.

London homes to finance a documentary that would become *The Palestinian* (1977)[41]. Filmed among guerrilla fighters and displaced civilians in Beirut, Sabra, and Shatila, the work combined observational realism with personal narration. Redgrave interviewed Yasser Arafat and Abu Jihad, humanizing figures demonized in Western media[42].[6]

In the United Kingdom and the United States, *The Palestinian* provoked outrage. Television networks refused to broadcast it, newspapers denounced it as "terrorist propaganda," and the Jewish Defense League (JDL) staged violent protests against her appearances[43]. Redgrave responded that «to defend the rights of the Palestinian people is not to deny the rights of the Jewish people[44]». Her stance was rooted in an internationalist ethic: justice in one context cannot be built upon injustice in another.

The controversy reached its peak on 3 April 1978, when Redgrave won the Academy Award for Best Supporting Actress for her role in *Julia* (Fred Zinnemann, 1977)[45]. Outside the Dorothy Chandler Pavilion in Los Angeles, JDL demonstrators burned effigies of her and carried placards reading "A PLO supporter does not deserve an Oscar." The political charge of that evening was intensified by the very film for which Redgrave received her award. *Julia*, directed by Zinnemann—an Austrian-born Jewish filmmaker who had fled Nazi persecution—is based on Lillian Hellman's memoir *Pentimento*[46]. The story follows the friendship between Hellman (played by Jane Fonda) and her childhood companion Julia (Redgrave), who becomes an underground activist resisting Nazism. When Hellman agrees to smuggle funds to the anti-fascist resistance through Berlin, the two women's destinies intertwine across a network of couriers and moral danger.

Zinnemann's direction imbues the film with the quiet gravity of testimony: the faces of Fonda and Redgrave, filmed in chiaroscuro interiors and train compartments, become mirrors of conscience under totalitarian threat[47]. At a symbolic level, the film united on-screen and off-screen activism. Fonda—already vilified in the U.S. for her anti-Vietnam stance—and Redgrave—publicly defending the Palestinian cause—embodied a transatlantic "duo of resistance," translating the ethical legacy of the 1930s into the language of 1970s protest.

On stage, dressed in an austere black gown, Redgrave delivered one of the most defiant acceptance speeches in the history of the Oscars: "Thank you for having awarded me this prize despite the vilification

41 *Ibid.,* pp. 146–148.
42 *Ibid.,* pp. 146–148.
43 *Ibid.,* p. 149.
44 *Ibid.*, p. 150.
45 M. SCHULMAN, *Oscar Wars: A History of Hollywood in Gold, Sweat, and Tears*, New York, Harper, 2023, pp. 250–258; F. ZINNEMANN, *An Autobiography*, New York, Scribner, 1992, pp. 318–322.
46 L. HELLMAN, *Pentimento: A Book of Portraits*, Boston, Little, Brown, 1973, pp. 185–231; F. ZINNEMANN, *An Autobiography, op.cit.,* pp. 310–323.
47 P. DAVID MARSHALL, *Celebrity and Power: Fame in Contemporary Culture, op. cit.,* pp. 167–172.

of a small bunch of Zionist hoodlums, whose behaviour is an insult to the stature of Jews all over the world[48]." The hall erupted in a mix of applause and boos. Within minutes, the speech was reframed by commentators as an antisemitic outburst. Yet Redgrave's words condemned not Judaism but militant nationalism, distinguishing between religious identity and political ideology. Still, in Cold-War America, such nuance was impossible. Overnight, she became a symbol of betrayal, joining Jane Fonda as a woman whose dissent challenged both patriarchal authority and geopolitical loyalty.

The backlash had tangible professional and legal consequences. In the U.S., theatres cancelled contracts; sponsors withdrew; television producers blacklisted her. In 1980, when she was cast in *Playing for Time*—a CBS film based on Fania Fénelon's memoir of surviving Auschwitz—bomb threats were issued against the network, and shots were fired at its Los Angeles offices[49]. The Boston Symphony Orchestra canceled a concert featuring her as narrator; police were ordered to protect her hotel. The irony was bitter: an actress denounced as antisemitic was portraying a Jewish survivor of the Holocaust.

Behind these episodes lay a deeper question: where does political speech end and incitement begin? The late 1970s saw Western democracies tighten laws on expression in response to terrorism by the IRA, the Red Brigades, and the PLO[50]. In Britain, the Prevention of Terrorism Act (1974) allowed the Home Secretary to deport or detain individuals for "supporting organizations connected to terrorism," a clause later used to exclude Palestinian activists. Redgrave's open solidarity with the PLO thus hovered on the edge of criminalization.

Her defence was both ethical and juridical. She maintained that her film and activism were protected under Article 19 of the Universal Declaration of Human Rights—the right "to seek, receive and impart information and ideas through any media[51]." She also invoked Article 10 of the European Convention on Human Rights, whose jurisprudence was beginning to recognize artistic expression as a form of political speech. In later interviews, she recalled: «I was filming what I saw. If truth is subversive, then the law itself must be examined[52]».

Her insistence on legality distinguished her from the revolutionary romanticism often attributed to the 1970s left. Redgrave understood that the symbolic violence of censorship could be countered only by appealing to the law's own principles. Her articulation of dissent thus resembled what Jacques Derrida later called law's auto-immunity—the way law undermines itself when it represses the freedom it claims to protect.

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[48] M. SCHULMAN, *Oscar Wars*, *op. cit.,* pp. 254–256; V. REDGRAVE, *An Autobiography*, *op. cit.*, pp. 150–151.
[49] V. REDGRAVE, *An Autobiography*, *op. cit.*, pp. 154–156
[50] C. WALKER, *Terrorism and the Law*, Oxford, Oxford University Press, 2011, pp. 41–44.
[51] V. REDGRAVE, *An Autobiography*, *op. cit.*, p. 152.
[52] *Ibid.,* p. 153

Redgrave's activism continued through the 1980s and 1990s. During the First Intifada, she organized benefit concerts for Palestinian children; in 1994, she performed *The Good Soldier Švejk* in war-torn Sarajevo. Her solidarity extended beyond Palestine: she spoke against apartheid, condemned NATO's bombing of Yugoslavia, and supported campaigns for political prisoners. Each intervention brought professional marginalization—proof that dissent in the arts is often punished not through law courts but through exclusion from the market.

From a legal-historical perspective, Redgrave's case illuminates the politics of reputational sanction—a form of informal censorship parallel to, yet distinct from, legal prohibition. The boycotts, cancellations, and tabloid defamations she endured exemplify what Pierre Bourdieu called the "symbolic power of orthodoxy": the ability of dominant institutions to enforce conformity without overt coercion[53]. Nevertheless, Redgrave's persistence carved out a space of alternative legality. Her invocation of international law—especially the principles of self-determination enshrined in the U.N. Charter—anticipated the later recognition of Palestinian statehood within UNESCO and the U.N. General Assembly[54]. She described herself as "a citizen of the world before being a subject of any government[55]". Her later career, crowned by the Sakharov Medal (1993) for her defence of human rights, confirmed that what had once been dismissed as extremism was, in retrospect, prophetic. Redgrave's life trajectory—from pariah to moral elder—reveals the dialectic of dissent and legitimacy in modern democracies: how the law first ostracizes, then absorbs, the voices that expose its hypocrisy.

4.1. The "Redgrave Defense" and Vanessa Redgrave's Activism in 2025

Although Vanessa Redgrave's activism is often read through the lens of moral courage and political conviction, her career also generated a series of concrete legal confrontations that placed her at the centre of late-twentieth-century debates on freedom of expression, contractual autonomy, and the neutrality of public institutions.

The case *Vanessa Redgrave v. Boston Symphony Orchestra, Inc.* (1984–1990) stands as one of the most significant intersections of art, politics, and law in late twentieth-century America. In 1982, Redgrave was engaged by the Boston Symphony Orchestra (BSO) to narrate Stravinsky's *Oedipus Rex* for the orchestra's centenary concerts under the direction of Seiji Ozawa, with stage direction by the young Peter Sellars. Shortly after the announcement, however, protests erupted among segments of the Boston public—particularly from members of Jewish organizations—who objected to Redgrave's outspoken support for

[53] P. BOURDIEU, *Language and Symbolic Power*, trans. John B. Thompson, Cambridge, MA, Harvard University Press, 1991, pp. 130–133.

[54] A. CASSESE, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, Cambridge University Press, 1995, pp. 215–220.

[55] V. REDGRAVE, *An Autobiography*, *op. cit.*, p. 157

the Palestine Liberation Organization (PLO) and her left-wing political positions. Under mounting pressure from donors and trustees fearful of boycotts or disruptions, the orchestra cancelled the engagement, issuing a vague press statement attributing the decision to "circumstances beyond its reasonable control." Redgrave responded by filing suit in the federal district court of Massachusetts, claiming breach of contract and violation of her civil rights under the newly enacted Massachusetts Civil Rights Act (MCRA), which prohibited "threats, intimidation, or coercion" interfering with rights secured by the state and federal constitutions.

At trial before Judge Robert Keeton in 1984, Redgrave argued that the BSO's action constituted political blacklisting—an unlawful acquiescence to public hostility that punished her for her political beliefs. The orchestra contended, instead, that its decision was motivated by legitimate concerns for public safety and the integrity of the concerts. Testimony from Sellars and others revealed a complex internal debate: while some within the BSO viewed the cancellation as moral cowardice comparable to artistic purges in totalitarian regimes, management feared violence, financial loss, and reputational damage. The jury awarded Redgrave her contractual fee and an additional $100,000 in consequential damages for loss of future employment, but rejected the broader civil rights claim, following Keeton's narrow interpretation of the MCRA as requiring proof of a specific intent to suppress political expression.

On appeal, Redgrave's lawyers—supported by amicus briefs from the Screen Actors Guild and civil liberties organizations—argued that mere acquiescence to external pressure should suffice to establish liability under the MCRA, since allowing private institutions to capitulate to public prejudice would revive the logic of the McCarthy-era blacklist. The First Circuit Court of Appeals, uneasy about extending such liability to private actors, certified key questions to the Massachusetts Supreme Judicial Court, which ultimately held that the statute indeed required "threats, intimidation, or coercion" undertaken with the purpose of interfering with rights, not mere submission to others' demands. As a result, Redgrave's civil rights claim failed, though the breach of contract finding was upheld with a reduced damages award.

The long litigation—spanning seven years and multiple appellate opinions—generated what legal scholars later called the "Redgrave defense", a doctrine allowing private employers to justify decisions made under external social or economic pressures rather than out of direct ideological animus. Beyond its legal implications, the case became emblematic of the tensions between artistic freedom and institutional self-censorship in democratic societies, highlighting the fragility of expressive liberty when cultural organizations fear political controversy[56].

[56] See M. HEINS, *Vanessa Redgrave v. Boston Stmphony Orchestra: Federalism, Forced Speech, and the Emergence of the Redgrave Defense,* in *Boston College Law Review*, 30 (5), 1989, pp. 1283-1354.

Parallel to her litigation, Redgrave articulated a distinct philosophy of universal rights, expressed both in public speeches and creative work. Throughout the 1980s and 1990s, she invoked Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights, treating them not as abstractions but as performative instruments – principles meant to be enacted through art and testimony[57]. She saw herself not merely as an artist but as a custodian of these universal norms, "an ambassador of conscience in the literal sense."

Her later documentary *Sea Sorrow* (2017) translated these principles into cinematic form. Dedicated to the European refugee crisis, the film opens with Redgrave reading from the 1951 Refugee Convention before shifting to testimonies of migrants stranded in Calais[58]. By juxtaposing her patrician British voice with the stories of the stateless, she dramatized what Hannah Arendt called "the right to have rights" – the fundamental claim to juridical visibility from which all other rights derive[59].

This juridical sensibility also shaped her brief political venture, the Peace and Progress Party, founded in 2004 with her brother Corin Redgrave. The party's manifesto drew explicitly on international law: it called for the enforcement of the Rome Statute of the International Criminal Court, the prosecution of war crimes committed during the Iraq invasion, and the recognition of Palestinian statehood under the U.N. Charter's principle of self-determination[60]. It was an unusual fusion of legal positivism and moral humanism – a conviction that law, properly invoked, could remain a revolutionary instrument.

Taken together, these episodes – courtrooms, manifestos, and films – reveal a coherent juridical identity. Redgrave did not merely protest policies; she challenged the structural violence of legality itself when it served power rather than justice. Her appeal to law was not rhetorical but constitutive: she used legal process as performance, transforming both the courtroom and the screen into forums of accountability. From a historical standpoint, Redgrave embodies the passage from moral witness to legal actor that defines post-war dissent. Where earlier generations of artists confronted politics through allegory, she insisted that artistic conscience could – and should – invoke the law's own vocabulary: articles, conventions, charters, and rights. In this sense, she stands not only as a moral but also as a juridical subject, demonstrating that the performer can also be a claimant, a litigant, and ultimately a legislator of moral law. Her trajectory reaffirms a paradox central to democratic legality: that the defense of freedom often depends on those willing to confront the law from within its own procedures. Vanessa Redgrave's legal battles thus belong not merely to the annals of cinema or activism, but to the genealogy of law as living dissent – a tradition in which conscience itself becomes a form of jurisprudence.

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[57] V. REDGRAVE, *An Autobiography*, *op. cit.*, p. 168.
[58] V. REDGRAVE, dir., *Sea Sorrow* (Italy–UK, BBC Films, 2017), in *Festival de Cannes Catalogue,* Festival de Cannes, Cannes, 2017, pp. 182–183.
[59] H. ARENDT, *The Origins of Totalitarianism*, New York, Harcourt Brace, 1951, pp. 296–297.
[60] G. BRODIE, *The translator on stage*, London, Bloomsbury Publishing, 2017, p. 86.

Nearly half a century after the controversies that defined her image, Vanessa Redgrave continues to embody the moral durability of dissent. In August 2025, at the age of eighty-eight, she made a rare public appearance at the "Pots and Pans for Palestine" protest at Lambeth Town Hall in Brixton, London[61]. The demonstration, organized by Lambeth and Southwark for Palestine and West Norwood 4 Palestine, was part of a U.K.-wide day of action calling attention to the starvation crisis in Gaza.

Photographs from the event circulated widely: Redgrave, seated in a wheelchair, holding a pan and spoon, joined demonstrators asked to "bang pots and pans to echo the hunger faced by Palestinians trapped under blockade[62]." Photographer Misan Harriman, who shared the image on social media, wrote that he «burst into tears» upon seeing «our national treasure, Vanessa Redgrave, still fighting for us to recognise the humanity of Palestinians forty-six years after her Oscars speech» [63]. The post went viral, with artists such as Annie Lennox, Paloma Faith, and Rosie O'Donnell commenting in admiration. The British press hailed Redgrave as a "national treasure," acknowledging the moral backbone that had once made her a pariah.

The Brixton protest illustrates how civil disobedience and humanitarian law intersect in the twenty-first century. The slogans chanted at the event—demanding unfettered humanitarian access to Gaza—echo the language of the Fourth Geneva Convention, which prohibits the starvation of civilians as a method of warfare. Redgrave's presence, frail yet resolute, thus bridges art, law, and morality: a living reminder that the duty to bear witness does not expire with age.

5. Glenda Jackson: From Stage to Parliament – The Ethics of Representation

If Jane Fonda and Vanessa Redgrave embodied dissent through the image of the public intellectual and the witness, Glenda Jackson (1936–2023) carried that dissent directly into the institutional realm of lawmaking. Her trajectory—from celebrated actress to elected Member of Parliament—makes her a unique figure in the history of women's political engagement within the arts. She transformed moral protest into legislative responsibility, insisting that the same empathy required of an actor could and should inform political governance[64].

Jackson's artistic reputation was already formidable long before she entered politics. Trained at the Royal Academy of Dramatic Art, she became one of Britain's most acclaimed stage and screen performers in the 1960s and 1970s, working with directors such as Peter Brook and Ken Russell. She won two Academy Awards for *Women in Love* (1970) and *A Touch of Class* (1973), roles that showcased her fearless approach

[61] P. WILLIX, *Vanessa Redgrave, 88, hailed as 'national treasure' after turning up to protest in rare public appearance,* in *Metro,* 3 August 2025.
[62] *Ibid.*
[63] M. HARRIMAN, *Instagram post,* August 12, 2025.
[64] C. BRYANT, *Glenda Jackson. The Biography*, London, Harper Collins, 1999, p. 166.

to sexuality, irony, and psychological complexity[65]. But behind the virtuosity lay a deep political awareness. Her performances were studies in moral tension: characters torn between individual integrity and social conformity.

Her public disillusionment with the Thatcher era – and particularly with the government's handling of social inequality and the miners' strike – catalyzed her entry into politics[66]. In 1992, she was elected to the House of Commons as Labour MP for Hampstead and Highgate. Her arrival marked an unprecedented crossing of boundaries between cultural and political representation. Yet unlike many celebrities who venture into politics, Jackson approached parliamentary work with austere seriousness. She rarely gave interviews about her acting career and refused to trade charisma for populism. Instead, she immersed herself in the procedural and juridical fabric of legislative life, serving on committees related to transport, housing, and social welfare[67].

Within Parliament, Jackson's speeches quickly earned a reputation for their ethical clarity and rhetorical precision. She treated the Commons floor as a kind of stage—not for performance in the superficial sense, but as a public forum of moral deliberation.

This articulation of law as moral aspiration echoes the humanistic jurisprudence of Lon Fuller and Ronald Dworkin: the idea that legality requires not only procedural correctness but also fidelity to an internal morality[68]. Jackson's parliamentary record bears this out. She consistently opposed measures that, in her view, eroded the social contract—from welfare cuts to restrictions on asylum. Her dissent was not the rhetoric of party politics but of principle.

The defining moment of her political career came in 2003, during the debates over the United Kingdom's participation in the Iraq War. Jackson delivered one of the most powerful speeches in opposition to Prime Minister Tony Blair's decision to invade Iraq without clear United Nations authorization[69]. She denounced the war as a betrayal of international law and of the United Nations Charter, arguing that pre-emptive intervention violated both Article 2(4)—prohibiting the use of force—and the spirit of collective security that had governed post-war Europe. "If we abandon the law," she said in the Commons, "we do not defend freedom—we abolish it."[70]

Her intervention anticipated the reasoning later articulated by jurists such as Lord Bingham and Philippe Sands, who argued that the Iraq invasion undermined the legitimacy of the rule of law in international

[65] I. WOODWARD, *Glenda Jackson: A Study in Fire and Ice*, London, Orion Publishing Group, 1985, pp. 61-89.
[66] G. C. BRYANT, *Glenda Jackson. The Biography, op.cit.,* p. 224
[67] C. BRYANT, *Ibid.,* pp. 236-240.
[68] L. L. FULLER, *The Morality of Law*, New Haven, Yale University Press, 1964, pp. 162–163; R. DWORKIN, *Law's Empire* , Cambridge, MA, Harvard University Press, 1986, pp. 176–180.
[69] *Hansard*, HC Deb 26 February 2003 vol. 400 cc. 272–274.
[70] *Ibid.*

relations. Within Parliament, Jackson's stand isolated her from many within her own party, but it confirmed her reputation as a legislator guided by ethical discernment rather than calculation. In her view, dissent was not disloyalty but the highest form of parliamentary duty.

Jackson's conception of representation was thus profoundly ethical. She believed that the legitimacy of democracy depended not on obedience to party lines but on the capacity to speak truth to power. In this sense, her career offers a rare synthesis of theatre and law: both, she maintained, are forms of public embodiment that require imagination and accountability to the citizenry. Her rhetorical style—sober, articulate, stripped of theatrical excess—reflected her conviction that the role of the parliamentarian, like that of the actor, is to give voice to those who cannot speak for themselves.

After Labour's defeat in 2010, Jackson announced she would not seek re-election, citing disillusionment with the increasing professionalization and moral emptiness of politics. She retired from Parliament in 2015, but her final speech—a blistering eulogy of Margaret Thatcher—went viral for its intellectual ferocity[71]. She denounced the economic and cultural legacy of Thatcherism as a poison that replaced compassion with calculation[72]. The speech encapsulated the coherence of her life: resistance to the commodification of both art and politics.

Following her departure from politics, Jackson returned to the stage, playing *King Lear* in a 2016 West End production and later on Broadway[73]. The role – Shakespeare's ultimate meditation on authority, justice, and madness – seemed an epilogue to her dual career. Critics noted that her *Lear* embodied a distinctly civic reading of tragedy: not the collapse of monarchy, but the moral disintegration of governance without empathy[74].

From a legal-historical standpoint, Jackson's career illuminates the continuum between artistic and juridical responsibility. Like Redgrave, she believed that legality must be grounded in moral imagination; unlike Redgrave, she sought to institutionalize that belief within the structures of the state. Her parliamentary speeches stand as contemporary exempla of conscientious legislation—acts of reasoned dissent that recall the Ciceronian and Burkean traditions of civic virtue[75].

Glenda Jackson's death in 2023 prompted tributes that described her as a voice of principle in an age of opportunism[76]. That phrase encapsulates her legacy. She demonstrated that the ethics of acting – the disciplined capacity to inhabit another's perspective – could become the ethics of politics. Her life thus

[71] *BBC Parliament*, "House of Commons – Tributes to Margaret Thatcher," April 10, 2013; transcript in *Hansard*, HC Deb 10 April 2013 vol. 561 cc. 1618–1620.
[72] *Ibid.*
[73] M. BILLINGTON, *Glenda Jackson's Triumphant Return as King Lear*, in *The Guardian*, November 5, 2016.
[74] B. BRANTLEY, *Glenda Jackson Rules a Muddled World in 'King Lear'*, in *The New York Times*, April 5, 2019.
[75] B.VICKERS, *Appropriating Shakespeare: Contemporary Critical Quarrels*, New Haven, Yale University Press, 1993, pp. 199–201.
[76] *Glenda Jackson Obituary,* in *The Guardian*, June 15, 2023

redefines the meaning of representation in both theatre and law: to make visible what is morally invisible, to speak where silence would mean complicity.

6. Angelina Jolie: Diplomacy and Restorative Justice.

If Glenda Jackson's trajectory marked the institutionalization of dissent within domestic politics, Angelina Jolie (1975–) represents its globalization. She is the most prominent contemporary actress to have translated celebrity capital into an instrument of international humanitarian law, transforming visibility into a medium of justice rather than spectacle. In her case, activism no longer confronts the state as antagonist nor enters Parliament as legislator: it acts through diplomacy, aligning artistic authority with the normative vocabulary of human rights, reparation, and accountability.

Born in Los Angeles, the daughter of actors Jon Voight and Marcheline Bertrand, Jolie emerged in the late 1990s as one of Hollywood's most recognizable faces. Her Academy Award–winning performance in *Girl, Interrupted* (1999) coincided with a world transformed by post–Cold War conflict and the rise of the global humanitarian conscience. These were also the years of what scholars have called the CNN effect, when televised images of war began to convert compassion into political agency. Jolie entered this visual economy of empathy not merely as an actress but as a participant observer[77].

Her first encounter with humanitarian work occurred during the filming of *Lara Croft: Tomb Raider* (2001) in Cambodia. Shocked by the poverty and the presence of landmines left from decades of war, she began visiting refugee camps under the auspices of the United Nations High Commissioner for Refugees (UNHCR)[78].[3] Later that year, she was appointed UNHCR Goodwill Ambassador, and in 2012 became Special Envoy to the High Commissioner, with a mandate to represent the agency in diplomatic contexts involving protracted displacement[79].[4] This appointment marked a decisive transformation: Jolie's activism acquired a juridical dimension, grounded in international law rather than celebrity charity.[80]

Her work soon expanded into the field of post-conflict justice, particularly the issue of sexual violence as a war crime. Since the 1990s, international tribunals such as the ICTY and ICTR had recognized rape as a crime against humanity, but translating these precedents into durable institutions remained fragile. Jolie used her diplomatic visibility to support the Trust Fund for Victims (TFV) of the International Criminal

[77] P.ROBINSON, *The CNN Effect: The Myth of News, Foreign Policy and Intervention*, London, Routledge, 2002, pp. 1–5.
[78] A. JOLIE, *Notes from My Travels: Visits with Refugees in Africa, Cambodia, Pakistan, and Ecuador*, New York, Simon & Schuster, 2003, pp. 12–15.
[79] UNHCR, *Press Release: Angelina Jolie Appointed UNHCR Goodwill Ambassador*, August 27, 2001; UNHCR, *Statement by the High Commissioner: Appointment of Angelina Jolie as Special Envoy*, April 17, 2012.
[80] A. JOLIE, *Notes from My Travels*, *op.cit.*, p. 19.

Court (ICC), insisting on reparations and survivor-centered justice[81]. Her approach reframed humanitarianism as restorative justice—law as reparation rather than punishment[82].

In 2013, she co-founded with then–UK Foreign Secretary William Hague the Preventing Sexual Violence in Conflict Initiative (PSVI), launched at the Global Summit to End Sexual Violence in Conflict (London, 2014)[83]. The summit brought together over one hundred governments and led to the drafting of the *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, now used by prosecutors and NGOs worldwide[84]. In her keynote address, Jolie declared: «We must send a message across the world that there is no shame in being a survivor of sexual violence – the shame is on the aggressor. Justice must be built, not begged for».[85].

This statement captures her shift from emotional advocacy to juridical reasoning: she positioned herself not as a humanitarian intermediary but as an advocate for legal empowerment, insisting that survivors be recognized as subjects of rights under international law[86].

Jolie's directorial debut, *In the Land of Blood and Honey* (2011), set during the Bosnian war, was itself a cinematic experiment in restorative storytelling. Filmed with local actors and languages, it portrayed the intersection of love, trauma, and justice through the experiences of women subjected to sexual slavery in detention camps[87]. Her subsequent film *First They Killed My Father* (2017), produced with Netflix and based on Loung Ung's memoir of the Cambodian genocide, continued this moral trajectory. Shot in Khmer and endorsed by the Extraordinary Chambers in the Courts of Cambodia (ECCC), the film served as what Jolie called a work of moral restitution[88]. In both content and method, it performed what transitional-justice theorists term "memory as reparation", transforming cinema into a site of public legal education.

From a historical standpoint, Jolie's activism exemplifies the evolution of female dissent from moral protest to juridical governance. Whereas Fonda and Redgrave confronted the state through opposition, Jolie acts through norm entrepreneurship, shaping international expectations of legality. Her career confirms that celebrity diplomacy has become a form of para-legal agency: a domain where symbolic

[81] International Criminal Court (ICC), *Trust Fund for Victims Annual Report 2014*, The Hague, ICC Publications, 2015, pp. 6–8.
[82] M. MINOW, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, Boston, Beacon Press, 1998, pp. 93–95
[83] A. JOLIE, W. HAGUE, *Global Summit to End Sexual Violence in Conflict: Official Report*, London, Foreign and Commonwealth Office, 2014, pp. 4–6.
[84] *Ibid.,* pp. 7–9.
[85] A. JOLIE, *Keynote Address*, *Global Summit to End Sexual Violence in Conflict* , London, London ExCel Centre, June 10, 2014, p. 3.
[86] A. JOLIE, W. HAGUE, *Global Summit*, *op.cit.,* p. 12.
[87] A. JOLIE, dir., *In the Land of Blood and Honey*, Los Angeles, FilmDistrict, 2011.
[88] A. JOLIE, dir., *First They Killed My Father* , Netflix, 2017; L. UNG, *First They Killed My Father: A Daughter of Cambodia Remembers*, New York, HarperCollins, 2000.

capital replaces coercive authority but pursues the same ends, the articulation of universal norms of justice[89].

6.1 The Actress as Diplomat: Law Beyond the Screen

As UN Special Envoy and later Visiting Professor in practice at the London School of Economics' Centre for Women, Peace and Security (since 2021), Jolie's work demonstrates how cinematic imagination can inform the procedures of global governance[90]. Her interventions at the UN Security Council – notably in 2013 and 2015 – urged the implementation of Resolutions 1820, 1888, and 2106, which criminalize sexual violence in armed conflict[91]. In her 2013 address, she concluded with a principle that condenses her ethos: «Justice is not optional. It is the foundation of lasting peace»[92]."

Through the PSVI and her collaboration with governments, Jolie helped develop the Murad Code (2021), a protocol for documenting sexual violence, and contributed to clauses of the UK Domestic Violence Act extending protection to international survivors[93]. Her practice bridges soft law and hard law, translating moral obligation into legal architecture.

Jolie's sustained engagement with the International Criminal Court exemplifies this commitment. During her 2016 visit to the newly inaugurated ICC building in The Hague, she met with the Trust Fund for Victims, which assists survivors of international war crimes and crimes against humanity. Speaking after her meeting, she emphasized that «there can be no complete justice without consideration for the victims of the war crimes themselves, and the practical assistance they need to move on with their lives and overcome the harm they have suffered».[94] Over 180,000 survivors have benefited from the Trust Fund's programs, including reproductive health services, vocational training, trauma-based counseling, and reconciliation workshops.

In this sense, Jolie extends the lineage of Hepburn's humanitarian witness, Fonda's civic disobedience, and Redgrave's legal defiance, while internalizing Jackson's legislative ethics. She represents a twenty-first-century synthesis: the juridical imagination of empathy, where advocacy becomes diplomacy and

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89 M. MOSTAFANEZH, *Angelina Jolie and the everyday geopolitics of celebrity humanitarianism in a Thailand-Burma border town*, in L.A. Richey, *Celebrity Humanitarianism and North–South Relations: Politics, Place and Power*, New York: Routledge, 2015, pp. 122–125.

90 Lisa Ann Richey and Alexandra Budabin, *Celebrity Humanitarianism and North–South Relations: Politics, Place and Power* (New York: Routledge, 2021), pp. 122–125.

91 United Nations Security Council, *Resolutions 1820 (2008), 1888 (2009), 2106 (2013)*, UN Doc. S/RES/2106; UN Press Release SC/10947, June 24, 2013.

92 A. JOLIE, *Speech to the UN Security Council on Sexual Violence in Conflict*, in *United Nations Official Records*, June 24, 2013, p. 6.

93 UK Foreign, Commonwealth and Development Office, *The Murad Code: Global Code of Conduct for Documenting Conflict-Related Sexual Violence* (London: FCDO, 2021), pp. 2–3; *Domestic Abuse Act 2021*, c. 17 (UK), Explanatory Notes, §§ 35–36.

94 https://www.icc-cpi.int/news/angelina-jolie-pitt-visits-icc-trust-fund-victims-hague

performance transforms into norm creation. Her commitment to restorative justice – rather than retribution – situates her within the contemporary jurisprudence of transitional justice. Her refrain that "no peace is durable without justice" echoes the ethos of the Rome Statute and the post-Holocaust legal tradition of moral universality. But her most enduring contribution may be pedagogical: she demonstrates that cinema, when ethically conceived, can become a medium of legal consciousness, training empathy into civic knowledge. In the historical continuum running from Hepburn's wartime witness to Fonda's anti-Vietnam dissent, from Redgrave's confrontation with censorship to Jackson's parliamentary conscience, Angelina Jolie stands as the paradigmatic figure of juridical activism in the twenty-first century. She shows that the moral authority once expressed through protest can, in an age of global institutions, become a practice of law-making by other means – diplomacy, art, and advocacy fused into a single coherent act of justice.

7. Law, Conscience, and the Persistence of Dissent

From the clandestine resistance of Audrey Hepburn to the institutional diplomacy of Angelina Jolie, the figures examined in this essay span nearly a century of attempts to negotiate the relationship between artistic visibility, political conflict and legal responsibility. Rather than forming a linear evolution, their trajectories reflect different historical constellations in which cinema intersected with humanitarianism, dissent and, at times, with the language of law. What emerges is not a unified path from art to legality, but a series of historical moments in which moral witness occasionally entered the legal and political arena.

Hepburn's humanitarian commitment grew out of wartime experience and developed within the communicative frameworks of post-war humanitarianism; Jane Fonda's civil disobedience unfolded within the polarized legal culture of the Vietnam era; Vanessa Redgrave's confrontation with censorship and broadcasting institutions translated political conflict into judicial controversy; Glenda Jackson's passage into parliamentary life reflected a specific moment in British political culture; and Angelina Jolie's engagement belongs to a globalized field in which celebrity, diplomacy and international criminal law increasingly overlap. Each case thus corresponds to a different configuration of media power, political authority and legal discourse.

Read in this perspective, these trajectories do not constitute a single genealogy of "female dissent" in the abstract, but a sequence of historically situated encounters between artistic authority and legal-political power. Law appears here not as a teleological horizon toward which all forms of dissent inevitably converge, but as one of several arenas in which public conflict may, under specific conditions, take juridical form.

At the same time, a recurrent pattern remains visible: when these actresses crossed the fragile boundary between humanitarian compassion and overt political contestation, they encountered various forms of sanction—economic, symbolic, institutional. The reactions to Fonda, Redgrave, Jackson and even to Jolie demonstrate that the alliance between art, dissent and legality continues to generate tensions precisely because it unsettles established distributions of authority between culture, politics and law.

The events of 2023–2024 confirm this continuity in the most dramatic way. In the wake of Israel's renewed assault on Gaza, a new generation of actresses – notably Susan Sarandon and Melissa Barrera – once again confronted the punitive mechanisms of the entertainment industry. On 21 November 2023, Sarandon was dropped by her agency, the United Talent Agency, after speaking at a pro-ceasefire rally in New York[95] Her statement – «There are a lot of people afraid of being Jewish at this time, and are getting a taste of what it feels like to be a Muslim in this country» – was denounced as antisemitic, despite her explicit call for empathy and peace[96]. The career reverberations were immediate for Sarandon, who apologized for the remarks. «I have lost work» she adds. «I have lost friends and family, but I have also gained inspiration from those who care enough about humanity and believe enough in the possibility of a better world to raise their voices to stop genocide. I'm grateful for my new empathic, brave friends and family. I abhor violence against any population. Just as large of a threat is the crushing of our First Amendment rights. That is what makes fascism possible. No one is free until all of us our free»[97].

A few days later, Melissa Barrera, the Mexican actress best known for her role in the *Scream* franchise, was dismissed by Spyglass Media Group for posting messages on social media in which she accused Israel of genocide and ethnic cleansing.[98]. In her response she wrote: «First and foremost I condemn Anti-Semitism and Islamophobia. I condemn hate and prejudice of any kind against any group of people. As a Latina, a proud Mexicana, I feel the responsibility of having a platform that allows me the privilege of being heard…». She continued, «I pray day and night for no more deaths, for no more violence, and for peaceful co-existence. I will continue to speak out for those that need it most and continue to advocate for peace and safety, for human rights and freedom. *Silence is not an option for me*»[99].

Both statements recall the vocabulary of Fonda and Redgrave, yet their context reveals a new form of repression: not state censorship, but the privatized discipline of global entertainment corporations. The punitive logic remains the same – to reduce political conscience to reputational risk – but the terrain has shifted from the courtroom to the algorithm, from institutional sanction to corporate contract.

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[95] A. HORTON, *Susan Sarandon Dropped by Talent Agency over Pro-Palestinian Remarks,* in *The Guardian*, November 21, 2023.
[96] *Ibid.*
[97] T. SIEGEL, *Hollywood's Israel Divide Intensifies: Susan Sarandon, Roger Waters and More Speak Out on Boycotts, Blacklists and Secret Dossiers*, in *Variety*, December 5, 2024.
[98] S. MCINTOSH, *Melissa Barrera: Actress fired from Scream 7 over Israel-Gaza posts*, in *BBC,* 23 November 2023
[99] *Ibid.*

At the same time, another, quieter form of dissent has emerged within Israel itself. During the 2025 Venice Film Festival, Hagai Levi – acclaimed Israeli director of *In Treatment* and creator of the new series *Etty*, a contemporary reimagining of the diaries of Etty Hillesum[100] – offered a powerful reflection on the moral crisis of artistic representation in times of war. Presenting the series, Levi declared that he opposed the current policies of Prime Minister Benjamin Netanyahu, denouncing the devastation in Gaza, yet he also appealed to the international community not to isolate Jewish artists or to confuse cultural identity with political complicity[101]. He emphasized that artistic dialogue must remain a space of humanism even amid catastrophe.

Levi's position resonates with the historical continuum traced in this essay. Like the women who preceded him, he insists that dissent must be grounded in empathy rather than exclusion, in the defense of shared humanity rather than the escalation of ideological walls. His *Etty* reinterprets Hillesum's diaries – written under Nazi persecution – as an allegory for contemporary conscience: the capacity to resist hatred without surrendering one's voice. In this sense, Levi embodies the same juridical and moral paradox explored by Fonda, Redgrave, Jackson, and Jolie: that to speak for justice is also to defend the law of dialogue itself, even when political systems and cultural institutions seem intent on extinguishing it[102].

7. Metacinematic Coda: "You Never Give Up, Do You?"

There is perhaps no more fitting epilogue to this long history of conscience and dissent than the final scene of Sydney Pollack's *The Way We Were* (1973)[103]. The film, starring Barbra Streisand and Robert

[100] «Around ten years ago, during a small bout of confusion and helplessness, I came across a book in Hebrew called The Sky within Me – The Diaries of Etty Hillesum. After breathless reading, I felt I had found something I could live by for the rest of my life. I grew up a pious Orthodox Jew. At twenty, I left that world forcefully, violently, abandoning questions of God, faith and meaning — but I felt the resulting void — and the demons that came with it — with work, ambition, success; mostly in vain. Hillesum offered another option: a different religiosity, a new sense of sanctity, beyond institutional religion. Hillesum's diary, written over eighteen months in Nazi-occupied Amsterdam, reads as the self-formation of a modern, free-spirited, humanistic, brave young woman. At its heart is a leap: from a neurotic, ambitious and egocentric persona to one who undergoes a radical change through deep autonomy. That process is accelerated by her love affair with Spier, a Jewish woman, and shaped by the background of war and persecution. Etty discovers that even when everything is taken away — she can never be deprived of her inner self — she still has an inner core that can't be violated. I believe one cannot tell another Holocaust story, nowadays, without charging it with a sense of contemporary relevance — and relating it to today's language. Hillesum's ideas are too urgent for today's stories: to find their honesty, they must break into our lived reality, especially after the horrors that shake the world of so many, over the past decades. Her rejection of hatred, solidarity with the unprivileged, and internal freedom have brought solace and meaning to senseless readers over the forty-four years since her diaries were published. I'm one of them. Above all, this is a love story: the love of a young woman for the man who awakened her soul, and out of that awakening — a love for life, God, and all humankind». H. LEVI, *Director's Statement*, in *BIENNALE CINEMA 2025 Catalogo dell'82 Mostra Internazionale d'Arte Cinematografica*, Venezia, Biennale Cinema, 2025, p. 185.

[101] F. PIERLEONI, *Venezia, Hagai Levi: 'Quello che accade a Gaza va fermato'. Al Lido con la serie Etty. 'Tanti israeliani contro il governo"*, in Ansa, 2 settembre 2025.

[102] E.HILLESUM, *Etty: The Letters and Diaries, 1941–1943*, ed. Klaas Smelik, Grand Rapids, Eerdmans Publishing, 2002.

[103] S. POLLACK, dir., *The Way We Were*, Los Angeles, Columbia Pictures, 1973.

Redford, tells the story of Katie Morosky and Hubbell Gardiner – two lovers divided by politics, ideology, and temperament. Katie, the daughter of Jewish socialist activists, is fiercely committed to justice; Hubbell, the charming writer and liberal idealist, drifts toward accommodation with the establishment. Their relationship, which begins in the fervor of the late 1930s, unravels under the shadow of McCarthyism, when Katie's political engagement threatens Hubbell's Hollywood career.

Years later, in the film's closing sequence, the two meet again by chance on a street in New York. Katie is handing out flyers – still active, still protesting, now campaigning against the Vietnam War. Hubbell, now married, recognizes her across the crowd. For a brief moment, they exchange words and glances charged with memory. She smooths his hair – an intimate gesture recalling their past – and he says quietly, almost tenderly: «You never give up, do you?» Her answer, «Only when I'm absolutely forced to. But I'm a very good loser... »[104] accompanied with a small, sad smile, is the film's moral resolution: she cannot give up. That final exchange, set against the backdrop of a new war, functions as a metacinematic mirror to the histories examined in this essay. Streisand's Katie, like Fonda, Redgrave, Jackson, Jolie, and the women who followed, refuses the comfort of forgetting. Her persistence – gentle yet unyielding – embodies the continuity of dissent across generations, the refusal to surrender moral clarity even when the world moves on.

It is also, in retrospect, a cinematic tribute to Robert Redford, who in life carried the same ethical legacy: as actor, director, environmentalist, and founder of the Sundance Institute and the Sundance Film Festival, he championed independent voices and socially engaged cinema.

Redford's passing on 16 September 2025, at his home in Sundance, Utah, at the age of eighty-nine, lends the scene a further layer of elegy – a reminder that the struggle to reconcile art, conscience, and affection is not confined to fiction but inscribed in the history of cinema itself[105].

In the soft melancholy of that moment – two former lovers separated by history yet still bound by recognition – we glimpse the enduring truth that has animated all these stories: that conviction and compassion, law and love, are not opposing forces but parallel forms of fidelity. To "never give up" is not only a moral posture but a cinematic tradition, one carried by the women and men who have believed that art can still speak justice to power.

It is a tradition that transcends film itself, becoming a kind of moral jurisprudence – a silent covenant among those who turn visibility into responsibility, and memory into resistance. From Hepburn's clandestine performances in occupied Holland to the digital activism of Sarandon and Barrera, the lineage

[104] *The Way We Were*, final scene, timecode 1:54:20–1:55:00.

[105] P. MEREGHETTI, *Redford, campione del cinema progressista che non si è mai piegato all'America chiusa e reazionaria,* in *Corriere della sera,* 16 September 2025.

of women in cinema who have refused silence constitutes a parallel jurisprudence – a law of conscience articulated through gesture, voice, and public risk.

Their actions have not merely reflected historical crises; they have shaped the moral vocabulary through which those crises are remembered. And even across profoundly different political contexts and historical moments, one shared orientation endures: *Silence is not an option*.

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